11/6-index

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INDEX
1980

This index covers the twelve monthly issues of Volume 6 of the *Record* published in 1980. Citations are expressed as follows: "4:5." The first number in the citation refers to the "Number" (month) of the *Record* issue. The second number, following the colon, indicates the page number in that issue. Thus, "4:5" means the article is in *Record* Number 4 (April), on page 5.

ADVERTISING
  See: COMMUNICATIONS/ADVERTISING

ADVISORY OPINIONS
  Alternate disposition of Advisory Opinion Requests
    -AOR 1979-45, 6:5
    -AOR 1980-13, 6:5
    -AOR 1980-15, 7:4
    -AOR 1980-24, 6:5
    -AOR 1980-66, 9:2
    -AOR 1980-85, 10:3
    -AOR 1980-112, 12:5
  Concurring Opinions
    -With AO 1979-67, 3:2
    -With AO 1979-72, 3:3
    -With AO 1980-20, 6:5
    -With AO 1980-62, 8:7
    -With AO 1980-96, 10:5
    -With AO 1980-108, 11:4
    -With AO 1980-115, 12:6
  Dissenting Opinions
    -To AO 1979-58, 4:4
    -To AO 1979-66, 3:2
    -To AO 1979-72, 3:3
    -To AO 1980-20, 6:5
    -To AO 1980-32, 7:5
    -To AO 1980-33, 9:3
    -To AO 1980-34, 7:5
    -To AO 1980-42, 8:4
    -To AO 1980-46, 8:5
    -To AO 1980-50, 9:3
    -To AO 1980-59, 9:3
    -To AO 1980-75, 9:6
    -To AO 1980-90, 10:5
    -To AO 1980-96, 10:5
    -To AO 1980-100, 11:4
    -To AO 1980-107, 11:4
    -To AO 1980-108, 11:4
    -To AO 1980-111, 12:5
  Index to Advisory Opinions
    -Available, 10:2
    -Correction, 11:1

  Status of 1980 Advisory Opinions, chart, 10:3
  Summaries of Advisory Opinions
    -1979-56: Affiliation of political action committees, 1:2
    -1979-58: Volunteer services provided by senior partner of law firm, 4:4
    -1979-59: Solicitation of personnel living abroad, 1:2
    -1979-60: Deduction plan contributions, 1:3
    -1979-62: Solicitations by trade association PAC, 4:4
    -1979-63: Prohibited transfer of corporate funds, 1:3
    -1979-64: Application of the Act to legislative support organization, 1:3
    -1979-65: Relationship between inactive draft committee and authorized committee, 2:3
    -1979-66: Notice in trade association's publications, 3:2
    -1979-67: Teacher intern program, 3:2
    -1979-68: Solicitations by membership organization's separate segregated fund, 3:3
    -1979-69: Trade association's solicitation of associate members, 7:4
    -1979-70: General public communication by separate segregated fund, 3:3
    -1979-71: Committee's pre-election reporting obligations, 2:3
    -1979-72: Trade association's reimbursement of separate segregated fund, 3:3
    -1979-73: Allocation of advance staff salary and per diem in Presidential campaign, 3:3
    -1979-74: Payment of compensation to candidate, 3:3
    -1979-75: Combined fundraising by trade association PAC with state/local affiliates, 3:3
    -1979-76: Sale of campaign items to corporations, prohibited, 3:4
    -1979-77: Activities of affiliated committees, 3:4
    -1979-78: Definition of honorarium, 3:4

Y 3.El 2/3:

-1979-80: Independent expenditure program of multicandidate committee, 4:4
-1979-81: Free use of community facility for fundraising event, 4:4
-1979-82: Use of excess campaign funds, 4:5
-1980-1: Solicitation of insurance agents by corporation PAC, 4:5
-1980-3: Qualifying as the national committee of a party, 4:5
-1980-4: Legal services donated to Presidential committee for defense in civil suit, 3:4
-1980-5: Delegate selection, 5:2
-1980-7: Political contributions by state-chartered corporation, 4:5
-1980-8: Transfer of funds from state PAC to federal PAC, 5:3
-1980-9: Communication costs paid by political committee, 5:3
-1980-10: Title of a corporate political action committee, 5:3
-1980-11: Contributions by spouse, 5:3
-1980-14: Transfer of campaign materials, 5:3
-1980-16: Corporate payment of candidates' expenses for charity event, 5:4
-1980-17: Fundraising by multicandidate committee, 5:4
-1980-19: Sale of poll by labor union, 5:4
-1980-20: Nonpartisan voter registration communication, 6:5
-1980-21: Donation of baseball tickets to host committee of national party committee, 6:5
-1980-22: Corporate sponsorship of town meetings, 6:5
-1980-23: Name of separate segregated fund, 6:6
-1980-25: Authorization notice on candidate's issue letter, 6:6
-1980-26: Contributions by government contractors, 6:6
-1980-27: Earmarked portion of membership dues for separate segregated fund, 6:6
-1980-28: Party ad promoting delegate selection, 6:6
-1980-29: Use of campaign funds, 6:7
-1980-30: Conversion of 1980 campaign committee into 1982 campaign committee, 7:4
-1980-32: Use of excess campaign funds to retire campaign debts, 7:5
-1980-33 and Supplement: Trade association's nonpartisan voter drive, 9:3
-1980-34: Artwork donated to (and sold by) political committee, 7:5
-1980-36: Preemption of state law, 6:7
-1980-37: Contributions from government contractor, 7:5
-1980-38: Allocation of computer-use expenses between state and federal committees, 7:5
-1980-39: Investment of funds in money market fund, 7:6
-1980-40: Multicandidate committee status for affiliated committees, 7:6
-1980-41: Use of candidate's excess campaign funds after his death, 7:6
-1980-42: Fundraising concerts, 8:4
-1980-43: Reporting 1974 debts by 1980 committee, 7:6
-1980-44: Contribution collection systems proposed by labor organization, 8:5
-1980-45: Nonprofit organization's nonpartisan voter registration drive, 7:7
-1980-46: Fundraising plan of independent expenditure committee, 8:5
-1980-47: Preemption of state law regulating election-day services, 7:7
-1980-48: Cooperative's solicitation of corporate members' stockholders, 7:7
-1980-49: Use of campaign funds for personal living expenses, 7:7
-1980-50: Corporate payment of expenses in connection with separate segregated funds, 9:3
-1980-51: Volunteer services by bank employees, 10:3
-1980-53: Donation of promotional item to host committees of national conventions, 8:6
-1980-54: Contributions by national banks, 8:6
-1980-55: Corporate assistance for secretary of state's voter registration drive, 8:6
-1980-56: Method of counting votes to determine minor party candidate's eligibility for public funding, 8:6
-1980-57: Fundraising to defray candidate's litigation fees, 8:6
-1980-58: National bank's contributions to state senator's officeholder expense fund, 8:7
-1980-59: Corporate funds donated to defray administrative costs of separate segregated fund, 9:3
-1980-60: Contributions accepted by campaign committee for two separate elections, 7:7
-1980-62: Labor organization's solicitation of temporary employees, 8:7
-1980-64: Labor organization's payment of members' delegate expenses, 8:7
-1980-65: Solicitation authorization published in trade association magazine, 9:3
-1980-67: Notices on invitations; contributions by spouses, 9:4
-1980-68: Contributions to runoff campaign, 9:4
-1980-68 Supplement: Post-dated contributions to primary runoff, 10:4
-1980-69: Solicitation form used by union's separate segregated fund, 9:4
-1980-70: Campaign materials sold by independent expenditure committee, 9:4
-1980-71: Notices required for corporate employee solicitation, 9:5
-1980-72: Law partnership's contribution plan, 9:5
-1980-74: Labor union's solicitation program, 9:6

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-1980-75: Trade association's solicitation of "designated" members, 9:6
-1980-76: Officeholder's fees for media appearances, 9:6
-1980-78: Campaign finance information used in solicitation letter, 9:6
-1980-79: Name of independent expenditure committee advocating Presidential candidate's defeat, 9:6
-1980-80: One campaign committee for special and primary election, 9:7
-1980-81: Contributions to draft committees, 10:4
-1980-83: Reporting by inactive Presidential committee, 10:4
-1980-84: Continued use of authorized committee's former name, 10:4
-1980-86: Abbreviated name for separate segregated fund, 10:4
-1980-87: Local party committee's coordinated party expenditures for Presidential ticket, 11:2
-1980-88: Bookkeeping services donated to Presidential committee, 10:4
-1980-89: Food and beverages donated to Congressman's district office receptions, 10:4
-1980-90: Public affairs T.V. program by corporation, 10:5
-1980-92: Corporate contributions to nonpartisan organization's voter drive, 11:3
-1980-93: Coin as campaign item, 10:5
-1980-94: Essay contest sponsored by candidate committee, 11:3
-1980-95: Bank's contribution to state political fund, 11:3
-1980-96: Post-election public funding for new party Presidential candidate, 10:5
-1980-97: Trust for pre-election Presidential activities, 11:3
-1980-98: Name and solicitation activities of separate segregated fund, 11:3
-1980-99: Accounting for contributions under $50, 11:3
-1980-100: Separate segregated fund of corporation owned by foreign nationals, 11:4
-1980-101: Commercial use of campaign finance information, 11:4
-1980-102: Definition of immediate family for solicitation purposes, 11:4
-1980-103: State tax checkoff funds distributed to candidates, 12:5
-1980-105: Notices required for advocacy literature, 11:4
-1980-107: Volunteer services provided by senior partner of law firm, 11:4
-1980-108: Bank loans made to new party Presidential candidate, 11:4
-1980-109: Candidate support by periodical, 11:5
-1980-110: Party organization's status as political committee, 12:5
-1980-111: Separate segregated fund of trade association with foreign menbers, 12:5
-1980-113: Excess campaign funds, 12:6
-1980-114: Refunds to terminated committee, 12:6
-1980-115: Law firm's compensation to partner campaigning for Congress, 12:6
-1980-117: State committee converted to principal campaign committee, 12:6
-1980-119: Coordinated party expenditures allocated for television ads, 12:7

Withdrawn Advisory Opinion Requests
-AOR 1979-79, 6:5
-AOR 1980-31, 5:2
-AOR 1980-35, 6:5
-AOR 1980-52, 7:4
-AOR 1980-61, 8:4
-AOR 1980-73, 9:2
-AOR 1980-82, 10:3
-AOR 1980-91, 10:3
-AOR 1980-104, 10:3

AFFILIATED COMMITTEE
See: POLITICAL COMMITTEE

AGRICULTURAL AND DAIRY EDUCATIONAL POLITICAL TRUST
Requester, AO 1980-23, 6:6

ALASKA LOGGERS ASSOCIATION/CLARENCE KRAMER POLITICAL ACTION COMMITTEE
Requester, AO 1979-69, 7:4

ALLEN FOR CONGRESS COMMITTEE
Requester, AO 1980-38, 7:5

ALLOCATION
Advertising expenses, between candidate and delegate, AO 1980-28, 6:6
Computer-use expenses, between state and federal committees, AO 1980-38, 7:5
Coordinated party expenditures (§441a(d)), for ad broadcast in several states, AO 1980-119, 12:7

ALTERNATIVES FUND, THE
Requester, AO 1980-17, 5:4

AMERICAN IRON AND STEEL INSTITUTE
Requester, AO 1980-22, 6:5

AMERICAN MEDICAL ASSOCIATION
AO 1979-68, 3:3
Common Cause, et al. v. *FEC, et al.*, 8:8

AMERICAN NATURAL RESOURCES, INC. POLITICAL ACTION COMMITTEES
Requester, AO 1980-86, 10:4

AMERICANS FOR AN EFFECTIVE PRESIDENCY
FEC v. *Americans for Change, et al.*, 9:8, 10:6

AMERICANS FOR CHANGE
Common Cause, et al. v. *Harrison Schmitt, et al.* and *FEC* (intervening defendant), 9:8
FEC v. ______________, *et al.*, 9:8, 10:6

AMES, FRED
______________ v. *FEC, et al.*, 11:9

ANDERSON, JOHN
______________, *et al.* v. *FEC*, 9:8, 10:6
______________, *et al.* v. *FEC* (second suit), 10:6
AO 1980-96, 10:5
General election funding certified, 12:1
Matching fund eligibility certified, 3:6
Matching funds certified, 4:9, 8:12
Requester, AO 1980-108, 11:4

ARIZONANS FOR LIFE
- Requester, AO 1980-9, 5:3

ASSOCIATED BUILDERS AND CONTRACTORS POLITICAL ACTION COMMITTEE
- Requester, AO 1979-75, 3:3

ASSOCIATED GENERAL CONTRACTORS POLITICAL ACTION COMMITTEE
- Requester, AO 1979-66, 3:2

ATLANTIC RICHFIELD COMPANY
- Requester, AO 1980-90, 10:5

AUDITS
- Released to the public
  - -Through 12/10/79, 1:4
  - -Through 1/7/80, 2:8
  - -Through 3/10/80, 4:9
  - -Through 4/15/80, 5:7
  - -Through 5/5/80, 6:10
  - -Through 9/11/80, 10:11
  - -Through 11/14/80, 12:9
- Status chart, 1:4

BAKER, HOWARD
- Matching fund eligibility terminated, 5:6
- Matching funds certified, 4:9, 8:12

BANKS
- Banking circular issued by Comptroller of the Currency, 5:5
- Contributions by
  - -Prohibited for state and local elections, AO 1980-54, 8:6
  - -Prohibitions and exemptions, 5:5
  - -To promote adoption of state constitutional amendments, AO 1980-95, 11:3
  - -To state officeholder's expense fund, AO 1980-58, 8:7
- Employees of, volunteer services during working hours, AO 1980-51, 10:3
- Expenditures by, 5:5
- Loans from
  - -Exempted contribution, 5:5
  - -To new party Presidential candidate, AO 1980-108, 11:4
- Separate segregated fund
  - -Established by bank, 5:5
  - -Solicitation activities, AO 1980-98, 11:3

BARNSTEAD FOR CONGRESS COMMITTEE
- ____________ v. *FEC, et al.*, 1:5

BELL, JEFFREY
- *FEC* v. ____________, *et al.*, 4:8, 6:8

BELL, MARJORIE
- *FEC* v. ____________, *et al.*, 6:8

BELOIT CORPORATION POLITICAL ACTION COMMITTEE
- Requester, AO 1980-8, 5:3

BIRMINGHAM TRUST NATIONAL BANK COMMITTEE FOR GOOD GOVERNMENT
- Requester, AO 1980-98, 11:3

BOZZUTO U.S. SENATE '80 COMMITTEE
- Requester, AO 1980-93, 10:5

BROWN, EDMUND
- Matching fund eligibility
  - -Certified, 3:6
  - -Terminated, 5:6
- Matching funds certified, 4:9, 8:12

BUILD POLITICAL ACTION COMMITTEE
- Requester, AO 1979-72, 3:3

BUSH, GEORGE
- General election funding certified, 9:10
- Matching fund eligibility certified, 3:6
- Matching funds certified, 4:9, 8:12

CALABRESE FOR CONGRESS COMMITTEE
- Requester, AO 1980-114, 12:6

CALIFORNIA SAVINGS AND LOAN LEAGUE
- Requester, AO 1980-7, 4:5

CAMPAIGN MATERIALS
- Delegate campaign materials
  - -AO 1980-5, 5:2
  - -Regulations proposed, 7:3
- Independent expenditure committee's sale of, AO 1980-70, 9:4
- Party committee payments for, exempted, AO 1980-87, 11:2
- Penny distributed as campaign item, AO 1980-93, 10:5
- Transfer of, from previous campaign, AO 1980-14, 5:3

CANDIDATES
- Compensation from employer while campaigning
  - -Employed as law firm partner, AO 1980-115, 12:6
  - -Employed in legislative lobbying/consulting firm, AO 1979-74, 3:3
- Congressional candidates
  - -Campaign finance statistics (1979-1980), 11:8
  - -*Campaign Guide for Congressional Candidates and Committees*, 9:1
  - -*House and Senate Bookkeeping Manual*, 9:1
- Debate regulations, 2:1, 5:1
- Delegates to convention not considered candidates, AO 1980-5, 5:2
- Loan from family member, MUR 737, 7:9
- Name of, included in title of committee
  - -Prohibited for independent expenditure committee, AO 1980-79, 9:6
  - -Required for authorized committee, AO 1980-84, 10:4
- Participation in
  - -Corporately sponsored charity event, AO 1980-16, 5:3
  - -Corporately sponsored town meetings, AO 1980-22, 6:5
- Personal funds of, MUR 737, 7:9
- Personal use of campaign funds for living expenses, AO 1980-49, 7:7
- Personal use of excess campaign funds
  - -AO 1979-82, 4:5
  - -AO 1980-41, 7:6
- Presidential
  - *See:* PRESIDENTIAL ELECTIONS
    PUBLIC FINANCING

READEX FICHE

  Reporting obligation to principal campaign committee, 4:1

CARTER, JIMMY
  General election funding certified, 10:7
  Matching fund eligibility certified, 1:5
  Matching funds certified, 4:9, 8:12
  See also: CARTER/MONDALE REELECTION COMMITTEE, INC.
    COMMITTEE FOR JIMMY CARTER

CARTER/MONDALE REELECTION COMMITTEE, INC.
  ______, *et al.* v. *FEC*, 9:9
  Requester
    -AO 1979-58, 4:4
    -AO 1980-4, 3:4

CENTRAL CAPITAL CORPORATION
  Requester, AO 1980-7, 4:5

CENTRAL LONG ISLAND TAX REFORM IMMEDIATELY
  FEC v. ______, *et al.*, 4:7

CENTRAL SAVINGS AND LOAN ASSOCIATION
  Requester, AO 1980-7, 4:5

CITIZENS FOR ELECTION OF HARRY DAVIS AS PRESIDENT COMMITTEE
  Requester, AO 1980-88, 10:4

CITIZENS FOR LAROUCHE, INC.
  Felice M. Gelman and ______ v. *FEC*, 8:9, 9:8
  Felice M. Gelman and ______ v. *FEC* (second suit), 11:9, 12:7

CITIZENS PARTY
  AO 1980-3, 4:5
  Barry Commoner v. *FEC, et al.*, 11:9
  Requester, AO 1980-56, 8:6

CLEARINGHOUSE
  Bilingual Elections Services Study
    -FEC testifies on, 9:12
    -Volume II released, 7:10
  Election costs and absentee ballot systems, FEC testifies on, 5:6
  Election Directory '80, 5:7
  Election Law Updates and *Election Case Law*, subscriptions available, 3:6, 4:5, 5:7, 7:10, 8:11, 9:12, 10:11, 11:11, 12:4
  Workshops conducted at International Institute of Municipal Clerks convention, 6:10

CLITRIM
  See: CENTRAL LONG ISLAND TAX REFORM IMMEDIATELY

COELHO, CONGRESSMAN TONY
  Requester, AO 1980-89, 10:4

COMMISSION
  See: FEDERAL ELECTION COMMISSION

COMMITTEE
  See: POLITICAL COMMITTEE

COMMITTEE FOR INDEPENDENT EXPENDITURES FOR REPUBLICANS
  Requester, AO 1980-70, 9:4

COMMITTEE FOR JIMMY CARTER
  Matching funds certified for 1976 Carter campaign, 4:9

COMMITTEE TO ELECT LYNDON LAROUCHE
  ______ v. *FEC*, 4:7
  FEC v. ______, 4:7

COMMON CAUSE
  ______, *et al.* v. *FEC, et al.*, 8:8
  ______ v. *Harrison Schmitt, et al. and FEC* (intervening defendant), 9:8

COMMONER, BARRY
  ______ v. *FEC, et al.*, 11:9
  AO 1980-3, 4:5
  AO 1980-56, 8:6

COMMUNICATIONS/ADVERTISING
  Authorization notices
    -AO 1980-70, 9:4
    -AO 1980-105, 11:4
    -Committee's official title required on, AO 1980-84, 10:4
    -MUR 885, 8:10
    -MUR 960, 10:9
    -Not required on candidate's issue letter, AO 1980-25, 6:6
    -Not required on invitations, AO 1980-67, 9:4
    -Not required on separate segregated fund solicitations, AO 1980-71, 9:5
    -State law preempted, AO 1980-36, 6:7
  Book by officeholder, serialization in magazine, AO 1979-78, 3:4
  Candidates' statements on issues
    -Corporate publication of, AO 1979-70, 3:3
    -Corporate sponsorship of television program on, AO 1980-90, 10:5
  Debates by candidates, nonpartisan, 2:1, 5:1
  Delegate expenditures for campaign materials and public media
    -AO 1980-5, 5:2
    -Regulations proposed, 7:3
  Delegates, ad/newsletter promoting selection of
    -AO 1980-28, 6:6
    -AO 1980-30, 7:4
  Expressly advocating candidate
    -AO 1980-105, 11:4
    -Identifying but not expressly advocating, AO 1980-9, 5:3; AO 1980-25, 6:6; AO 1980-67, 9:4
    -MUR 885, 8:10
    -MUR 960, 10:9
  Invitation to committee reception, AO 1980-67, 9:4
  Letter on political issue, AO 1980-25, 6:6
  Letter soliciting contributions, use of campaign finance information in, AO 1980-78, 9:6
  Magazine's endorsement of and solicitation for candidates, AO 1980-109, 11:5
  Media appearances by officeholder, AO 1980-76, 9:6
  Partisan, by national banks, 5:5
  Reporting form for communication costs, 7:2
  Television ad, allocation of party expenditures for, AO 1980-119, 12:7

See also: INDEPENDENT EXPENDITURES
VOTER DRIVES

COMPLIANCE
Enforcement procedures
-Expedited, for general election, 11:9
-Interim, pending prescription of amended regulations, 4:6
Complaints based on newspaper articles, 1:3
Nonfilers/late-filers
-Notification procedures, 8:9
-Publication of, 2:4, 5:6, 6:7, 7:9, 10:8, 11:10, 12:8
Summaries of enforcement cases (Matters Under Review)
-MUR 454: Extension of credit, 7:8
-MUR 737: Candidate's personal funds, 7:9
-MUR 885: Express advocacy, required notice, federal/state accounts, 8:10
-MUR 960: Failure to include notices on public communications, 10:9
-MUR 1025: Solicitation of union members by separate segregated fund, 8:11
-MUR 1032: Creditor's complaint for committee's failure to pay, 11:10

CONCERNED CITIZENS FOR KLECZKA
Requester, AO 1980-117, 12:6

CONNALLY FOR PRESIDENT COMMITTEE
Requester, AO 1980-34, 7:5

CONROY FOR U.S. SENATE COMMITTEE
Requester, AO 1980-47, 7:7

CONTAINER CORPORATION POLITICAL ACTION COMMITTEE
Requester, AO 1979-59, 1:2

CONTRIBUTIONS
Accounting for state and federal contributions, MUR 885, 8:10
Allocation of, in federal/nonfederal fundraising, AO 1979-75, 3:3
American citizens stationed abroad, contributions by, AO 1979-59, 1:2
Banks, contributions by, 5:5
-AO 1980-54, 8:6
-AO 1980-58, 8:7
-AO 1980-95, 11:3
See also: BANKS
Campaign materials sold by independent expenditure committee, AO 1980-70, 9:4
Corporation's state-chartered subsidiary, contributions by, AO 1980-7, 4:5
Delegates, contributions to
-AO 1980-5, 5:2
-Regulations proposed, 7:3
Draft committee, contributions to, AO 1980-81, 10:4
Earmarked, independent expenditure committee as conduit for, AO 1980-46, 8:5
Elections, contributions for
-Last minute reporting, 10:2
-Primary runoff, AO 1980-68, 9:4; AO 1980-68 Supplement, 10:4
-Separate elections, AO 1980-60, 7:7
Excess campaign funds
See: EXCESS CAMPAIGN FUNDS
Excessive, MUR 737, 7:9
Exempted
-Artwork volunteered for fundraising, AO 1980-34, 7:5
-Bank loans, 5:5; AO 1980-108, 11:4
-Baseball tickets donated to host committee, AO 1980-21, 6:5
-Bookkeeping services, AO 1980-88, 10:4
-Community facility used for fundraising event, AO 1979-81, 4:4
-Corporate payments for administrative costs of separate segregated fund, AO 1980-59, 9:3
-Corporate payments for candidates' participation in charity event, AO 1980-16, 5:4
-Corporate payments for nonpartisan voter drives, AO 1980-20, 6:5; AO 1980-45, 7:7; AO 1980-55, 8:6; AO 1980-92, 11:3
-Corporate sponsorship of town meeting, AO 1980-22, 6:5
-Debates, donations to stage, 2:1, 5:1
-Delegate fees, AO 1980-5, 5:2, 7:3
-Entertainers' services volunteered for fundraising concern, AO 1980-42, 8:4
-Food/beverage donations, AO 1980-89, 10:4
-Fundraising services donated by law firm partner, AO 1979-58, 4:4
-Legal and accounting services by corporate employees, AO 1979-77, 3:4
-Legal services donated by law firm partner, AO 1980-107, 11:4
-Legal services donated for civil lawsuit, AO 1980-4, 3:4
-Legislative support organization's donations, AO 1979-64, 1:3
-Student interns' scholarships, AO 1979-67, 3:2
-Tote bags donated to host committee, AO 1980-53, 8:6
Government contractors, contributions by
-AO 1980-26, 6:6
-AO 1980-37, 7:5
Guideline for contribution, not enforceable, AO 1979-60, 1:3
In-kind
-By delegate to Presidential candidate, AO 1980-5, 5:2, 7:3
-Publishing candidates' statements, AO 1979-70, 3:3
Itemized and unitemized, reporting, 6:3
Litigation fee defrayed with, AO 1980-57, 8:6
Partnership
-Contribution attributed to partner's spouse, AO 1980-67, 9:4
-Reporting contributions received from, 6:4
Post-dated checks, reporting of, AO 1980-68 Supplement, 10:4
Prohibited
-AO 1979-76, 3:4
-AO 1980-1, 4:5
-AO 1980-19, 5:4
-AO 1980-37, 7:5
-AO 1980-54, 8:6
-AO 1980-64, 8:7
-AO 1980-89, 10:4
-AO 1980-90, 10:5
-MUR 737, 7:9
Refunding contributions
-AO 1980-30, 7:4
-AO 1980-37, 7:5

- Reporting contributions, 6:3
- Solicitation letter, use of campaign finance information in, AO 1980-78, 9:6
- Solicitation of
  - -By contracted individuals, AO 1980-17, 5:4
  - -By independent expenditure committee, AO 1980-46, 8:5
  - -By magazine, AO 1980-109, 11:5
  - -Campaign finance information used in solicitation letter, AO 1980-78, 9:6
  - *See also:* FUNDRAISING
    - SEPARATE SEGREGATED FUND
- Spouses, contributions by
  - -AO 1980-11, 5:3
  - -AO 1980-67, 9:4
- Tax checkoff funds (state) considered contributions, AO 1980-103, 12:5
- Under $50, accounting procedures, AO 1980-99, 11:3
- Undesignated, AO 1980-30, 7:4
- Unregistered organizations, accepting contributions from, 11:1

CONVENTION
- Delegates to
  - *See:* DELEGATES
- Donations to host committees
  - -Baseball tickets, AO 1980-21, 6:5
  - -Tote bags, AO 1980-53, 8:6
- Public financing of
  - -Certifications, 4:9, 9:10, 10:7
  - -Regulations prescribed, 2:2
- Reporting form, 7:2

CORPORATION
- Campaign debts forgiven by, 6:3, 12:3
- Candidate debates, donations to stage, 2:2, 5:1
- Candidate statements
  - -Published by, AO 1979-70, 3:3
  - -Television program on, produced by, AO 1980-90, 10:5
- Charity event, corporate payment of candidates' expenses for, AO 1980-16, 5:4
- Purchase of fundraising item, prohibited, AO 1979-76, 3:4
- Separate segregated fund
  - -Immediate family defined for solicitation purposes, AO 1980-102, 11:4
  - -Of corporation wholly owned by foreign nationals, AO 1980-100, 11:4
  - -Of trade association, donations to defray administrative costs, AO 1980-59, 9:3
  - -Payment of expenses in connection with, AO 1980-50, 9:3
  - -Solicitation by, of commissioned agents, AO 1980-1, 4:5
  - -Solicitation by, of executive/administrative personnel and stockholders, AO 1980-71, 9:5
  - -Solicitation by, of personnel stationed abroad, AO 1979-59, 1:2
  - -Solicitation of affiliated committee, AO 1979-77, 3:4
  - -Transfer of treasury funds to, AO 1979-63, 1:3
  - *See also:* SEPARATE SEGREGATED FUND
- Subsidiary of federally chartered corporation, contributions/expenditures by AO 1980-7, 4:5
- Town meeting sponsored by, AO 1980-22, 6:5
- Voter drives
  - -By nonprofit corporation, donations to, AO 1980-45, 7:7; AO 1980-92, 11:3
  - -By state government, donations to, AO 1980-55, 8:6
  - -Newspaper ad, payments for, AO 1980-20, 6:5

CRANE FOR PRESIDENT COMMITTEE, INC.
- Requester, AO 1980-83, 10:4

CRANE, PHILIP
- AO 1980-83, 10:4
- Matching fund eligibility
  - -Certified, 3:6
  - -Terminated, 5:6
- Matching funds certified, 4:9, 8:12

CROCKETT, GEORGE
- Requester, AO 1980-80, 9:7

DANNEMEYER FOR CONGRESS COMMITTEE
- Requester, AO 1980-32, 7:5

DANNY THOMPSON MEMORIAL LEUKEMIA FUND
- Requester, AO 1980-16, 5:4

DAYTON, MARK
- Requester, AO 1980-81, 10:4

DEBTS
- Extension of credit, MUR 454, 7:8
- Forgiving debts, 6:2, 12:3
- Nonpayment of, MUR 1032, 11:10
- Reporting debts
  - -AO 1980-43, 7:6
  - -MUR 1032, 11:10
- Retirement of
  - -With contributions received after primary to retire primary debts, 6:2
  - -With excess campaign funds, AO 1980-32, 7:5
  - -With refund received by terminated committee, AO 1980-114, 12:6
- Statement of settlement, 6:3, 12:3

DELEGATES
- Advertisement/newsletter promoting delegate selection
  - -AO 1980-28, 6:6
  - -AO 1980-30, 7:4
- Contributions to, 7:3
- Expenditures for delegate campaign, 7:3
- Expenses to attend convention defrayed with
  - -Campaign funds, AO 1980-29, 6:7
  - -Union treasury funds, AO 1980-64, 8:7
- Fee to qualify as, exempted, AO 1980-5, 5:2, 7:3
- Regulations proposed, 7:3
- Slate, as political committee, AO 1980-5, 5:2, 7:3

DEMOCRATIC NATIONAL COMMITTEE
- Convention entitlement received, 4:9, 9:10, 10:7
- Requester, AO 1979-67, 3:2

DEMOCRATIC STATE CENTRAL COMMITTEE OF LOUISIANA
- Requester, AO 1980-5, 5:2

DENNIS, JAMES
- *FEC* v. ______________, 6:8

DOLE, ROBERT
- Matching fund eligibility
  - -Certified, 3:6
  - -Terminated, 5:6
- Matching funds certified, 4:9, 8:12

DURKIN FOR U.S. SENATE COMMITTEE
- ____________ v. *FEC, et al.*, 12:7

ELECTIONS
- Absentee ballot systems, FEC testifies on, 5:6
- *Bilingual Elections Services Study*
  - -FEC testifies on, 9:12
  - -Volume II available, 7:10
- Committee used for both primary and special election campaign, AO 1980-80, 9:7
- Compliance procedures expedited for general election, 11:9
- Contributions for two separate elections, AO 1980-60, 7:7
- Costs of, FEC testifies on, 5:6
- Day services, state law prohibiting, AO 1980-47, 7:7
- *Election Directory '80*, available, 5:7
- *Election Law Updates* and *Election Case Law*, subscriptions available, 3:6, 4:5, 5:7, 7:10, 8:11, 9:12, 10:11, 11:11, 12:4
- Georgia runoff elections, 5:1, 6:1
- Information on and agencies to contact, 10:8
- Louisiana
  - -Primary for Congressional candidates, rescheduled, 8:8
  - -Special election, 4:2
- Presidential elections
  - *See:* PRESIDENTIAL ELECTIONS
- Public financing of
  - *See:* PUBLIC FINANCING
- Runoff election contributions
  - -AO 1980-68, 9:4
  - -Of post-dated checks, AO 1980-68 Supplement, 10:4
- Special elections
  - -Louisiana, 4:2
  - -Michigan, 7:2
  - -New procedures for FEC filing notifications, 3:1
  - -Pennsylvania, 3:1
  - -West Virginia, 5:1

EMERSON, WILLIAM
- Requester, AO 1979-74, 3:3

EXCESS CAMPAIGN FUNDS
- Financing another election with
  - -AO 1980-30, 7:4
  - -AO 1980-113, 12:6
- Personal use of
  - -AO 1979-82, 4:5
  - -AO 1980-41, 7:6
  - -AO 1980-113, 12:6
- Questions and answers, 800 line, 6:3, 12:3
- Refunded to contributors, AO 1980-30, 7:4
- Refund to terminated committee not considered excess funds, AO 1980-114, 12:6
- Retirement of campaign debts with, AO 1980-32, 7:5
- State officeholder, use of by, AO 1980-113, 12:6
- *See also:* USE OF FUNDS

EXECUTIVE/ADMINISTRATIVE PERSONNEL
- Solicitation of
  - -As designated members of trade association, AO 1980-75, 9:6
  - -By bank, AO 1980-98, 11:3
  - -By trade association, AO 1979-62, 4:4
  - -Commissioned agents, AO 1980-1, 4:5
  - -Disclaimer notice not required, AO 1980-71, 9:5
  - -Employees stationed abroad, AO 1979-59, 1:2
  - -Immediate family defined for solicitation purposes, AO 1980-102, 11:4

EXECUTIVE COMMITTEE OF THE CITIZENS PARTY
- Requester, AO 1980-3, 4:5

EXPENDITURES
- Banks, expenditures by, 5:5
- Computer-use expenses, allocation of, AO 1980-38, 7:5
- Coordinated party expenditures (§441a(d))
  - -Allocation of, for ad broadcast in several states, AO 1980-119, 12:7
  - -By local committee for Presidential ticket, AO 1980-87, 11:2
  - -Questions and answers, 800 line, 11:6
  - -1980 limits, 3:5
- Delegate's campaign, expenditures for
  - *See:* DELEGATES
- Essay contest, payments for sponsoring, AO 1980-94, 11:3
- Exempted, for state/local party committees, AO 1980-87, 11:2
- Independent expenditures
  - *See:* INDEPENDENT EXPENDITURES

FARMER'S MUTUAL HAIL POLITICAL ACTION COMMITTEE
- Requester, AO 1980-1, 4:5

FEDERAL ELECTION COMMISSION
- Administrative termination of political committees, 6:3, 12:4
- *Annual Report 1979*, 7:11
- Audits conducted by
  - *See:* AUDITS
- Budget, FEC requests supplemental appropriations, 5:7
- Chairman and Vice Chairman elected, 6:1
- Clearinghouse
  - *See:* CLEARINGHOUSE
- Commissioner Tiernan accepts ABA appointment, 7:9
- Invitation policy, 6:9
- Public appearances, 1:6, 2:4, 3:6, 4:6, 6:2, 7:2, 9:7, 10:9, 11:5
- Publications
  - *See:* PUBLICATIONS
- Staff
  - -Deputy General Counsel appointed, 12:10
  - -General Counsel appointed, 1:4
  - -Staff Director appointed, 9:1
- Testimony
  - -On *Bilingual Election Services Study*, 9:12
  - -On election costs and absentee ballot systems, 5:6

FEDERATION OF AMERICAN HOSPITALS
- Requester, AO 1980-27, 6:6

FIRST FARMER AND MERCHANTS NATIONAL BANK
- Requester, AO 1980-51, 10:3

FLUOR PUBLIC AFFAIRS COMMITTEE
Requester, AO 1980-39, 7:6

FORMS
Availability of, 4:2, 7:2, 10:2
Communications costs reporting form, 7:2
Computerized format, procedures for approval, 11:1
Convention reporting form, 7:2
Independent expenditures and contributions received reporting form, 7:2
New forms, 4:2, 7:2
Reporting contributions on FEC forms, 6:3
Termination report, 6:3, 12:4
See also: REPORTS

FRANK ASKIN FOR CONGRESS COMMITTEE
Requester, AO 1980-30, 7:4

FREEDOM OF INFORMATION ACT
FEC report on, 6:9
Regulations on, 6:2

FROST, CONGRESSMAN MARTIN
Requester, AO 1980-43, 7:6

FRU-CON CORPORATION POLITICAL ACTION COMMITTEE
Requester, AO 1980-102, 11:4

FUND FOR A CONSERVATIVE MAJORITY
FEC v. *Americans for Change, et al.*, 9:8, 10:6

FUNDRAISING
Accounting methods for contributions under $50, AO 1980-99, 11:3
Artwork sold for, AO 1980-34, 7:5
Community facility provided for, AO 1979-81, 4:4
Concert held for, AO 1980-42, 8:4
Contract with individuals to solicit contributions, AO 1980-17, 5:4
Independent expenditure committee's solicitation for candidate, AO 1980-46, 8:5
Joint, allocation of federal/nonfederal funds, AO 1979-75, 3:3
Law firm partner's donation of services for, AO 1979-58, 4:4
Litigation fees, defrayal of through, AO 1980-57, 8:6
Sale of campaign item to corporations, prohibited, AO 1979-76, 3:4
Solicitation of contributions
  See: CONTRIBUTIONS

GALPERIN FOR CONGRESS COMMITTEE
Requester, AO 1980-60, 7:7

GELMAN, FELICE
______________ *and Citizens for LaRouche, Inc.* v. *FEC*, 8:9, 9:8
______________ *and Citizens for LaRouche, Inc.* v. *FEC* (second suit), 11:9, 12:7

GONZALEZ, CONGRESSMAN HENRY
Requester, AO 1980-57, 8:6

GOVERNMENT CONTRACTOR
Contribution from individual who contracts with, AO 1980-26, 6:6
Contributions from, refunded, AO 1980-37, 7:5

GREENBURGH DEMOCRATIC CAMPAIGN COMMITTEE
Requester, AO 1980-110, 12:5

HALL FOR CONGRESS
Requester, AO 1980-14, 5:3

HANSEN, JAMES
Requester, AO 1980-109, 11:5

HART FOR SENATE CAMPAIGN COMMITTEE, INC.
Requester, AO 1980-42, 8:4

HOISTING AND PORTABLE ENGINEERS LOCAL UNION 101
Requester
  -AO 1976-60, 1:3
  -AO 1980-69, 9:4

HONORARIA
Distinguished from book royalty, AO 1979-78, 3:4
Distinguished from fees for regular media appearances, AO 1980-76, 9:6

ILLINOIS MEDICAL POLITICAL ACTION COMMITTEE
Requester, AO 1979-68, 3:3

INDEPENDENT EXPENDITURES
By delegates made on behalf of Presidential candidate, AO 1980-5, 5:2
Express advocacy determining factor, AO 1980-9, 5:3
Independent expenditure committee
  -Campaign materials sold by, AO 1980-70, 9:4
  -Consultant or vendor used by, AO 1979-80, 4:4
  -Fundraising plan results in contribution in-kind, AO 1980-46, 8:5
  -Title of, may not include candidate's name, AO 1980-79, 9:6
Mass mailing solicitation costs, AO 1980-46, 8:5
Reporting form used by persons other than committees, 7:2

INFORMATION AIDS
Advisory Opinion Index
  -Available, 10:2
  -Correction, 11:1
Bibliography of campaign finance laws, 6:7
Election information (from agencies other than FEC), 10:8
Presidential candidates on 1980 ballot, 12:2
Presidential primaries, 1980 dates, 1:1

INTERNATIONAL ASSOCIATION OF MACHINISTS
______________ v. *FEC*, 4:8

INVESTMENT OF FUNDS
Money market fund, campaign funds invested in, AO 1980-39, 7:6

JONES, LEROY
______________, *et al.* v. *FEC*, 4:7

KELLY SERVICES, INC.
Requester, AO 1980-53, 8:6

KENNEDY FOR PRESIDENT COMMITTEE
Requester, AO 1979-73, 3:3

KENNEDY, SENATOR EDWARD
AO 1979-65, 2:3
AO 1979-73, 3:3
AO 1980-81, 10:4
Matching fund eligibility certified, 2:3
Matching funds certified, 4:9

KENNELLY, BARBARA
Requester, AO 1980-55, 8:6

KILPATRICK AND CODY
Requester, AO 1980-72, 9:5

LABOR ORGANIZATION
Candidate debates, donations to stage, 2:2, 5:1
Opinion poll results, purchase of, AO 1980-19, 5:4
Payment of delegates's expenses to convention, prohibited, AO 1980-64, 8:7
Payroll deduction for contributions
  -AO 1979-60, 1:3
  -AO 1980-44, 8:5
  -MUR 1025, 8:11
Solicitation of temporary employees, AO 1980-62, 8:7
Vacation fund deduction for contributions
  -AO 1980-69, 9:4
  -AO 1980-74, 9:6

LAROUCHE, LYNDON
Matching fund eligibility
  -Certified, 2:3, 4:9
  -Reestablishment of, denied, 7:7
  -Terminated, 5:6
See also: COMMITTEE TO ELECT LYNDON LAROUCHE
CITIZENS FOR LAROUCHE, INC.

LAW IN THE COURTS
FEC v.
  -*Americans for Change, Americans for an Effective Presidency and Fund for a Conservative Majority,* 9:8, 10:6
  -*Bell, Jeffrey,* 4:8, 6:8
  -*Bell, Marjorie, et al.,* 6:8
  -*Central Long Island Tax Reform Immediately, et al.,* 4:7
  -*Committee to Elect Lyndon LaRouche, et al.,* 4:7
  -*Dennis, James,* 6:8
  -*Lee, Louis,* 7:8
  -*National Right to Work Committee, et al.,* 6:7
  -*Williamson, Gene,* 6:8
v. FEC
  -*Ames, Fred,* 11:9
  -*Anderson, John, et al.,* 9:8, 10:6
  -*Anderson, John, et al.* (second suit), 10:6
  -*Barnstead for Congress Committee,* 1:5
  -*Carter/Mondale Reelection Committee, et al.,* 9:9
  -*Committee to Elect Lyndon LaRouche,* 4:7
  -*Common Cause, et al.,* 8:8
  -*Common Cause, et al.* v. *Harrison Schmitt, et al.* and *FEC* (intervening defendant), 9:8
  -*Commoner, Barry,* 11:9
  -*Durkin for U.S. Senate Committee,* 12:7
  -*Finn, George, et al.,* 12:8
  -*Gelman, Felice, and Citizens for LaRouche, Inc.,* 8:9, 9:8
  -*Gelman, Felice, and Citizens for LaRouche, Inc.* (second suit), 11:9, 12:7
  -*International Association of Machinists,* 4:8
  -*Jones, LeRoy, et al.,* 4:7
  -*Mott, Stewart, Rhonda Stahlman and the National Conservative Political Action Commmittee,* 2:7, 9:7
  -*National Republican Senatorial Committee,* 11:9
  -*National Right to Work Committee, et al.,* 6:7
  -*Republican National Committee, et al.,* 6:7

LAWYERS TITLE INSURANCE COMPANY
Requester, AO 1980-59, 9:3

LEE, LOUIS
FEC v. __________, 7:8

LEGAL AND ACCOUNTING SERVICES
Donated by senior partner of law firm, AO 1980-107, 11:4
Donated for defense in civil law suit, AO 1980-4, 3:4
Provided by corporate employees, AO 1979-77, 3:4

LEGISLATION
FEC testifies on election costs and absentee ballot systems, 5:6
Federal Election Campaign Act amended, 1:1, 2:1
Record Supplement: Summary of 1979 Amendments to the Federal Election Campaign Act, March 1980, 4:10

LITIGATION
See: LAW IN THE COURTS

LOANS
Bank loans
  -Exempted contribution, 5:15
  -To new party candidate, AO 1980-108, 11:4
Candidate's family member as lender, MUR 737, 7:9
Repayment of, with refunds made to terminated committee, AO 1980-114, 12:6

LTV CORPORATION ACTIVE CITIZENSHIP CAMPAIGN
Requester, AO 1979-70, 3:3

MATTERS UNDER REVIEW (MURs)
See: COMPLIANCE

MEDIA
See: COMMUNICATIONS/ADVERTISING

MID-STATES DISTRIBUTING COMPANY
Requester, AO 1980-48, 7:7

MONDALE, WALTER
General election funding certified, 10:7

MOTTL, CONGRESSMAN RONALD
Requester, AO 1979-82, 4:5

MOTT, STEWART
__________, *et al.* v. *FEC*, 2:7, 9:7

MOYNIHAN, SENATOR DANIEL
Requester, AO 1979-78, 3:4

MURs
See: COMPLIANCE

NATIONAL ASSOCIATION OF REALTORS
Requester, AO 1980-33 and Supplement, 9:3

NATIONAL CONSERVATIVE POLITICAL ACTION COMMITTEE
Mott, Stewart, et al. v. *FEC*, 2:7, 9:7
Requester
-AO 1979-80, 4:4
-AO 1980-46, 8:5

NATIONAL EDUCATION ASSOCIATION
Requester
-AO 1980-44, 8:5
-AO 1980-64, 8:7

NATIONAL REPUBLICAN SENATORIAL COMMITTEE
______________ v. *FEC*, 11:9
Requester, AO 1980-119, 12:7

NATIONAL RESTAURANT ASSOCIATION
Requester, AO 1980-75, 9:6

NATIONAL RIGHT TO WORK COMMITTEE
______________, *et al.* v. *FEC*, 6:7

NATIONAL TIRE DEALERS AND RETREADERS ASSOCIATION
Requester, AO 1980-65, 9:3

NATIONAL UNITY CAMPAIGN
Requester
-AO 1980-96, 10:5
-AO 1980-108, 11:4

NCPAC
See: NATIONAL CONSERVATIVE POLITICAL ACTION COMMITTEE

NEW YORK YANKEE BASEBALL CLUB
Requester, AO 1980-21, 6:5

NONFILERS
FEC releases names of, 2:4, 5:6, 6:7, 7:9, 10:8, 11:10, 12:8
Notification procedures for nonfilers/late-filers, 8:9

NORTH CAROLINA STATE DEMOCRATIC EXECUTIVE COMMITTEE
Requester, AO 1980-103, 12:5

NOTICE, AUTHORIZATION
See: COMMUNICATIONS/ADVERTISING

OAK INDUSTRIES, INC. POLITICAL ACTION ASSOCIATION
Requester, AO 1980-71, 9:5

OFFICEHOLDERS
Bank donations to state officeholder's expense fund, AO 1980-58, 8:7
Corporate payment of officeholders' expenses to charity event, AO 1980-16, 5:4
Excess campaign funds, use of
See: EXCESS CAMPAIGN FUNDS
Food and beverages donated for Congressman's district office receptions, AO 1980-89, 10:4
Honoraria, acceptance of
See: HONORARIA
Media appearances by, AO 1980-76, 9:6

OPERATING ENGINEERS LOCAL 37
Requester, AO 1980-74, 9:6

OPINION POLLS
Sale of, AO 1980-19, 5:4

OPINIONS
See: ADVISORY OPINIONS

PARTNERSHIP
Campaigning by law firm's partner, AO 1980-115, 12:6
Contribution attributed to partner's spouse, AO 1980-67, 9:4
Contribution plan of, AO 1980-72, 9:5
Reporting contributions from, 6:4
Volunteer activity by senior partner of law firm
-AO 1979-58, 4:4
-AO 1980-107, 11:4

PARTY
Campaign finance statistics (1979-1980), 11:7
Convention entitlements received, 4:9
Coordinated party expenditures (§441a(d))
-Allocation of, for ad broadcast in several states, AO 1980-119, 12:7
-By local committee, for Presidential ticket, AO 1980-87, 11:2
-Questions and answers, 800 line, 11:6
-1980 limits, 3:5
Delegate ballot fee, not a contribution, AO 1980-5, 5:2, 7:3
Delegate selection expenses, 7:3
Democratic Presidential election funds certified, 10:7
Local committee
-Expenditures for Presidential ticket, AO 1980-87, 11:2
-Registration and reporting requirements, 4:1, 10:1
-Status as political committee, AO 1980-110, 12:5
National committee to qualify as, AO 1980-3, 4:5
New party Presidential candidate
-Procedures for certifying public funds for, 12:1
-Public funding for, AO 1980-56, 8:6; AO 1980-96, 10:5
Record Supplement for State and Local Party Organizations, August 1980, 9:1
Republican Presidential election funds certified, 9:10
State committee's distribution of tax checkoff funds, AO 1980-103, 12:5

PASPAC
Requester, AO 1979-71, 2:3

PELHAM REPUBLICAN TOWN COMMITTEE
Requester, AO 1980-87, 11:2

PHILLIPS, RUFUS
Requester, AO 1980-11, 5:3

PIERCE O'DONNELL FOR CONGRESS COMMITTEE
Requester, AO 1980-115, 12:6

PIPEFITTERS LOCAL 524 POLITICAL ACTION FUND
  Requester, AO 1980-62, 8:7

PLANNED PARENTHOOD OF NEW YORK CITY, INC.
  Requester, AO 1980-45, 7:7

POLITICAL COMMITTEE
  Affiliated committee
    -Contribution limits, AO 1979-56, 1:2; AO 1979-77 3:4
    -Fundraising among, AO 1979-75, 3:3
    -Multicandidate committee status of, AO 1980-40, 7:6
  Authorized committee
    -Terminating reporting status, 6:3
    -Use of former name on stationery, AO 1980-84, 10:4
  Campaign Guide for Congressional Candidates and Committees, 9:1
  Campaign Guide for Presidential Candidates and Their Committees, 1:1
  Contributions from unregistered organizations, acceptance of, 11:1
  Delegate committees, 7:3
  Delegate slate, qualifying as, AO 1980-5, 5:2, 7:3
  Draft committee
    -Contributions to, AO 1980-81, 10:4
    -Inactive, relationship to authorized committee, AO 1979-65, 2:3
  Independent expenditure committee
    See: INDEPENDENT EXPENDITURES
  Multicandidate committee
    -Affiliated committees qualify as, AO 1980-40, 7:6
    -Index, 2:4
  Names of, restrictions, 7:10
    -AO 1980-10, 5:3
    -AO 1980-23, 6:6
    -AO 1980-79, 9:6
    -AO 1980-84, 10:4
    -AO 1980-86, 10:4
    -AO 1980-98, 11:3
  Nonfederal committee converted to principal campaign committee, AO 1980-117, 12:6
  Party committee
    See: PARTY
  Political action committee
    See: SEPARATE SEGREGATED FUND
  Presidential committee, inactive, filing requirements, AO 1980-83, 10:4, 12:1
  Principal campaign committee used for primary and special election, AO 1980-80, 9:7
  Registration and reporting obligations, 4:1
  Separate segregated fund
    See: SEPARATE SEGREGATED FUND
  Terminated, use of refunds by, AO 1980-114, 12:6
  Termination of, 6:3, 12:4
  Trust established for Presidential transition not a political committee, AO 1980-97, 11:3

POLLS, OPINION
  See: OPINION POLLS

PORTLAND CEMENT ASSOCIATION
  Requester, AO 1980-111, 12:5

PRESIDENTIAL ELECTIONS
  Allocation of advance staff salary and per diem, AO 1979-73, 3:3
  Campaign finance statistics (pre-nomination), 3:1, 9:10
  Campaign Guide for Presidential Candidates and Their Committees, 1:1
  Convention financing regulations, 2:2
  Debate regulations, 2:1, 5:1
  Draft committee
    -Contributions to, AO 1980-81, 10:4
    -Relationship with authorized committee, AO 1979-65, 2:3
  General election candidates on 1980 ballot, 12:2
  General election public funding regulations, 8:1, 10:6
  Party committee coordinated expenditures (§441a(d))
    See: PARTY
  Presidential committee, inactive, filing, AO 1980-83, 10:4
  Primaries, dates for, 1:1
  Public financing
    See: PUBLIC FINANCING
  Transition activities, pre-election trust to conduct, AO 1980-97, 11:3

PRESIDENTIAL TRANSITION TRUST
  Requester, AO 1980-97, 11:3

PRO-LIFE ACTION COUNCIL
  Requester, AO 1980-105, 11:4

PROXMIRE, SENATOR WILLIAM
  Requester, AO 1980-76, 9:6

PUBLIC DISCLOSURE
  Campaign finance information
    -Commercial use of, AO 1980-101, 11:4
    -Use of in solicitation letter, AO 1980-78, 9:6
  Fee schedule for purchasing documents, 2:7
  Freedom of Information Act, 6:2, 6:9
  Public Records Office, hours extended, 10:2
  Regulations on, 6:2

PUBLIC FINANCING
  Bank loans secured by expectation of post-election funding, AO 1980-108, 11:4
  Convention financing
    -Major party entitlements received, 4:9, 9:10
    -Regulations on, 2:2
  General election
    -Funds certified to Anderson/Lucey, 12:1
    -Funds certified to Carter/Mondale, 10:7
    -Funds certified to Reagan/Bush, 9:10
    -Questions and answers, 8:7, 9:9
    -Revised regulations, 8:1, 10:6
  Matching fund activity
    -Report released, 3:1
    -Summary chart, 8:12
  Matching fund eligibility of candidates certified, 1:5, 2:3, 3:6, 4:9
  Matching fund eligibility of candidates terminated, 5:6
    -LaRouche, Lyndon, denied reestablishment of eligibility, 7:7
  Matching fund repayment hearing for Udall '76 Committee, 1:5
  Matching fund suspension, regulations on 6:1
  New party candidates
    -Certification procedures, 12:1

-Eligibility for post-election funding, AO 1980-56, 8:6; AO 1980-96, 10:5
-Loans secured on post-election funding, AO 1980-108, 11:4
See also: PRESIDENTIAL ELECTIONS

PUBLICATIONS
Advisory Opinion Index
-Available, 10:2
-Correction, 11:1
Annual Report 1979, 7:11
Bilingual Elections Services Study, 7:10, 9:12
Campaign Finance and Federal Elections Bibliography, 6:9
Campaign Guide for Congressional Candidates and Committees, 9:1
Campaign Guide for Presidential Candidates and Their Committees, 1:1
Election Directory '80, 5:7
Election Law Updates and *Election Case Law,* 3:6, 4:5, 5:7, 7:10, 8:11, 9:12, 10:11, 11:11, 12:4
FEC Regulations, 1980 edition, 8:1
House and Senate Bookkeeping Manual, 9:1
Multicandidate Committee Index, 2:4
Record Index to 1979 issues, March 1980, 4:10
Record Supplement for State and Local Party Organizations, August 1980, 9:1
Record Supplement: Summary of 1979 Amendments to the Federal Election Campaign Act, March 1980, 4:10
1979-1980 FEC Reports on Financial Activity
-*Interim Report No. 1,* Presidential Pre-nomination Campaigns, 3:1
-*Interim Report No. 7,* Presidential Pre-nomination Campaigns, 9:10
-*Interim Report No. 8,* U.S. Senate and House Campaigns, 11:8
-*Interim Report No. 9,* Party and Nonparty Committees, 11:7

REAGAN-BUSH COMMITTEE
AO 1980-97, 11:3
Requester, AO 1980-107, 11:4

REAGAN, RONALD
General election funding certified, 9:10
Matching fund eligibility certified, 3:6, 4:9

RECORDKEEPING
Contributions under $50, AO 1980-99, 11:3
Disbursements, 5:5

REGULATIONS
Candidate debate regulations, 2:1, 5:1
Convention financing regulations, 2:2
Delegate selection regulations, 7:3
Freedom of Information Act regulations, 6:2
Presidential general election public funding regulations, 8:1, 10:6
Primary matching fund suspension regulations, 6:1, 8:1
Public disclosure regulations, 6:2
Regulations implementing 1979 Amendments to Act
-Chart on, 4:3
-FEC prescribes, 5:1
-FEC proposes, 4:2
-Published, 8:1
Status of FEC regulations, chart, 8:3, 9:5, 10:7, 11:11, 12:9

REPORTS
Contributions, reporting of
-Contributor's employer identified, 5:5
-From partnerships, 6:4
-Itemized and unitemized, 6:3
-Last minute pre-election contributions, 10:2
-Post-dated checks, AO 1980-68 Supplement, 10:4
Coordinated party expenditures (§441a(d)), reporting of, 11:6
Debts, reporting of
-AO 1980-43, 7:6
-MUR 1032, 11:10
Disbursements, reporting of, 5:5
Filing reports
-Charts on 1980 filing dates, 2:4
-Charts on 1980 filing dates, correction, 3:2
-Nonfiler/late-filer notification procedures, 3:1, 8:9
-With federal government, 4:2
-With state officers, 4:2
Forms
See: FORMS
Monthly reports, 4:1, 7:1, 9:2, 10:1, 10:4, 12:1
Post-general election reports, 10:2, 12:1
Pre-election reports
-AO 1979-71, 2:3
-By nonauthorized committee, 5:5
-For Georgia Congressional elections, 5:1, 6:1
-For Louisiana Congressional primary, 8:8
-Pre-general election reports, 10:2
Presidential committee, inactive, must file, AO 1980-83, 10:4
Quarterly, 4:1, 7:1, 10:1
Registration and reporting requirements
-For local party committees, 10:1
-New procedures, 4:1
Semiannual reports, 7:1
Special election
-Louisiana, 4:2
-Michigan, 7:2
-New procedures for FEC filing notifications, 3:1
-Pennsylvania, 3:1
-West Virginia, 5:1
Termination report
-Amended, AO 1980-114, 12:6
-General filing procedures, 6:3, 12:4
Year-end reports, 1:1, 10:2, 12:1
1979 Amendments, changes stemming from
-Reporting procedures and forms, 4:1
-Required reports, 2:4

REPUBLICAN COMMITTEE OF CHESTER COUNTY
Requester, AO 1980-28, 6:6

REPUBLICAN NATIONAL COMMITTEE
__________ v. *FEC,* 6:7
Convention entitlement received, 4:9
Requester, AO 1979-67, 3:2

REPUBLICAN ROUNDUP COMMITTEE
Requester, AO 1980-99, 11:3

REVERE SUGAR CORPORATION
Requester, AO 1980-100, 11:4

REXNORD, INC.
Requester, AO 1980-20, 6:5

RICHARD C. WHITE CONGRESSIONAL CLUB OF THE PERMIAN BASIN
Requester, AO 1980-84, 10:4

RICHARDSON, DON
Requester, AO 1980-78, 9:6

RSC CAMPAIGN FUND
Requester, AO 1979-76, 3:4

RUSSELL B. LONG COMMITTEE
Requester, AO 1980-67, 9:4

RUTH MILLER FOR CONGRESS COMMITTEE
Requester, AO 1980-36, 6:7

SCHMITT, HARRISON
Common Cause, et al. v. ____________, *et al. and FEC* (intervening defendant), 9:8

SCOTT PAPER COMPANY POLITICAL ACTION COMMITTEE
Requester, AO 1979-56

SEPARATE SEGREGATED FUND (SSF)
Affiliation among
  -AO 1979-56, 1:2
  -AO 1980-40, 7:6
  -Fundraising with affiliates, AO 1979-75, 3:3
  -Solicitation of affiliate, AO 1979-77, 3:4
Campaign finance statistics (1979-1980), 11:7
Corporate donation to defray costs of trade association SSF, AO 1980-59, 9:3
Corporate funds, transfers of, prohibited, AO 1979-63, 1:3
Corporate payment of expenses in connection with SSF, AO 1980-50, 9:3
Established by corporation, wholly owned by foreign nationals, AO 1980-100, 11:4
Established by national bank, 5:5
Established by trade association with foreign members, AO 1980-111, 12:5
Financial activity notice in trade association's publications, AO 1979-66, 3:2
Fundraising with state and local affiliates, AO 1979-75, 3:3
Investment of campaign funds in money market fund, AO 1980-39, 7:6
Name of, use of abbreviation or acronym, 7:10
  -AO 1980-10, 5:3
  -AO 1980-23, 6:6
  -AO 1980-86, 10:4
  -AO 1980-98, 11:3
Registration and reporting obligations, 4:1
Solicitation by bank, AO 1980-98, 11:3
Solicitation by cooperative, of corporate members' shareholders, AO 1980-48, 7:7
Solicitation by corporation
  -Immediate family defined for solicitation purposes, AO 1980-102, 11:4
  -Of commissioned agents, AO 1980-1, 4:5
  -Of executive/administrative personnel and stockholders, AO 1980-71, 9:5
  -Of personnel stationed abroad, AO 1979-59, 1:2
Solicitation by labor organization, of temporary employees, AO 1980-62, 8:7
Solicitation by membership organization, in conjunction with annual dues statement, 1979-68, 3:3
Solicitation by payroll deduction
  -AO 1979-60, 1:3
  -AO 1980-44, 8:5
  -MUR 1025, 8:11
Solicitation by trade association
  -Authorization form published in association's magazine, AO 1980-65, 9:3
  -By earmarking membership dues, AO 1980-27, 6:6
  -Of another trade association, AO 1979-62, 4:4
  -Of associate "members," AO 1979-69, 7:4
  -Of corporately "designated" members, AO 1980-75, 9:6
Solicitation by vacation fund deduction
  -AO 1980-69, 9:4
  -AO 1980-74, 9:6
Solicitation costs refunded by trade association, AO 1979-72, 3:3
Solicitation of affiliated organization, AO 1979-77, 3:4
Transfer from state PAC to federal PAC, AO 1980-8, 5:3
Transfer of funds from corporation, prohibited, AO 1979-63, 1:3

SHERMAN, BRAD
Requester, AO 1980-79, 9:6

SHUMWAY, CONGRESSMAN NORMAN
Requester, AO 1980-29, 6:7

SLACK FOR CONGRESS COMMITTEE
Requester, AO 1980-41, 7:6

SMILOWITZ, JACK
Requester, AO 1980-25, 6:6

SOLICITATION
See: CONTRIBUTIONS
  FUNDRAISING

STAHLMAN, RHONDA
Stewart Mott, et al. v. *FEC*, 2:7, 9:7

STATE
Bank's contributions to state/local elections, prohibited, AO 1980-54, 8:6
Candidate's state committee converted to federal committee, AO 1980-117, 12:6
Contributions, state/federal, accounting for, MUR 885, 8:10
Coordinated party expenditures (§441a(d)), limits by state, 3:5
Corporate contribution for passage of state constitutional amendments, AO 1980-95, 11:3
Filing reports/statements with state officers, 4:2
Officeholder expense fund, bank donations to, AO 1980-58, 8:7
Preemption of state law
  -Advertising notice, AO 1980-36, 6:7
  -Election-day services prohibition not preempted, AO 1980-47, 7:7
Tax checkoff funds, distribution by party committee, AO 1980-103, 12:5
Voter registration drive by state government with corporate assistance, AO 1890-55, 8:6

STATISTICS
- Advisory opinions 1980, 10:3
- Audits, 1:4
- Independent expenditures, new indexes on, 9:10
- Matching fund activity, 8:12
- Multicandidate Committee Index, 2:4
- *1979-1980 FEC Reports on Financial Activity*
  - Party and Nonparty Political Committees, *Interim Report No. 9* (table), 11:7
  - Presidential Pre-Nomination Campaigns, *Interim Report No. 1*, 3:1
  - Presidential Pre-Nomination Campaigns, *Interim Report No. 7* (chart), 9:10
  - U.S. Senate and House Campaigns, *Interim Report No. 8* (graph), 11:8

STENHOLM FOR CONGRESS COMMITTEE
- Requester
  - AO 1980-26, 6:6
  - AO 1980-37, 7:5

TOOLING AND MACHINING PAC
- Requester, AO 1979-62, 4:4

TOURISM CAUCUS
- Requester, AO 1979-64, 1:3

TRADE ASSOCIATION
- Separate segregated fund
  - Corporate funds donated to defray costs of, AO 1980-59, 9:3
  - Established by trade association with foreign members, AC 1980-111, 12:5
  - Publication of financial activity, AO 1979-66, 3:2
  - Solicitation costs refunded to, AO 1979-72, 3:3
- Solicitation authorization published in association's magazine, AO 1980-65, 9:3
- Solicitation of
  - Another association's separate segregated fund, AO 1979-62, 4:4
  - Associate "members," AO 1979-69, 7:4
  - Contributions by earmarking membership dues, AO 1980-27, 6:6
  - Corporately "designated" members, AO 1980-75, 9:6
- Sponsorship of town meeting, AO 1980-22, 6:5
- Voter drive (nonpartisan) conducted by, AO 1980-33 and Supplement, 9:3

TRAMMELL CROW PARTNERS POLITICAL COMMITTEE AND TRAMMELL CROW COMPANY POLITICAL ACTION COMMITTEE
- Requesters, AO 1979-77, 3:4

TRANSAMERICA CORPORATION POLITICAL ACTION COMMITTEE
- Requester, AO 1980-40, 7:6

TRANSFERS
- Among affiliated committees, AO 1979-68, 3:3
- From corporation to separate segregated fund, AO 1979-63, 1:3
- From state PAC to federal PAC, AO 1980-8, 5:3

UDALL, CONGRESSMAN MORRIS
- Repayment hearings, 1:5

UNION BANK AND TRUST COMPANY
- Requester, AO 1980-58, 8:7

UNITED MERCHANTS AND MANUFACTURERS, INC.
- Requester, AO 1980-50, 9:3

UNITED TELECOMMUNICATIONS, INC.
- Requester, AO 1980-10, 5:3

USE OF FUNDS
- Excess campaign funds
  - *See:* EXCESS CAMPAIGN FUNDS
- For delegate expenses, AO 1980-29, 6:7
- Personal use of, AO 1980-49, 7:7

VETERANS OF FOREIGN WARS POLITICAL ACTION COMMITTEE
- Requester, AO 1979-63, 1:3

VIRGINIA DEMOCRATS FOR LEADERSHIP AND COMMITMENT
- Requester, AO 1979-65, 2:3

VOLUNTEER ACTIVITY
- Artwork, AO 1980-34, 7:5
- Baseball tickets donated to convention host committee, AO 1980-21, 6:5
- Bookkeeping services, AO 1980-88, 10:4
- By bank employees during working hours, AO 1980-51, 10:3
- Compensation for volunteers, AO 1980-17, 5:4
- Entertainers' services for concerts, AO 1980-42, 8:4
- Food and beverage donated to Congressman's district office receptions, AO 1980-89, 10:4
- Fundraising services by senior partner of law firm, AO 1979-58, 4:4
- Legal and accounting services
  - Donated by senior partner of law firm, AO 1980-107, 11:4
  - Donated for defense in civil law suit, AO 1980-4, 3:4
  - Provided by corporate employees, AO 1979-77, 3:4
- Totebags donated to convention host committee, AO 1980-53, 8:6

VOTER DRIVES
- Nonpartisan
  - By corporation, AO 1980-20, 6:5
  - By incorporated trade association, AO 1980-33 and Supplement, 9:3
  - By nonprofit corporation, AO 1980-45, 7:7; AO 1980-92, 11:3
  - By state government with corporate assistance, AO 1980-55, 8:6
  - Newspaper ad by corporation, AO 1980-20, 6:5
- Partisan, by state/local party committees for Presidential ticket, AO 1980-87, 11:2

VOTER REGISTRATION PROGRAM
- Requester, AO 1980-92, 11:3

WEINBERGER, MARVIN
- Requester, AO 1980-101, 11:4

WEINSTEIN, STEVEN
- Requester, AC 1980-49, 7:7

WENDELL YOUNG FOR CONGRESS COMMITTEE
  Requester, AO 1980-19, 5:4

WHITEHURST FOR CONGRESS COMMITTEE
  Requester, AO 1980-94, 11:3

WILLIAMSON, GENE
  FEC v. ______________, 6:8

WINN, CONGRESSMAN LARRY
  Requester, AO 1979-81, 4:4

ZELL MILLER FOR CONGRESS COMMITTEE
  Requester
    -AO 1980-68, 9:4
    -AO 1980-68 Supplement, 10:4
    -AO 1980-113, 12:6

800 LINE ARTICLES
  Bank loans, 5:5
  Complaints, filing procedures, 10:8
  Contributions
    -Received after primary, to retire primary debts, 6:2
    -Reporting contributor's employer name, 5:5
    -Reporting itemized and unitemized contributions, 6:3
  Coordinated party expenditures (§441a(d)), 11:6
  Debts, forgiveness and settlement of, 6:2, 12:3
  Disbursements, recordkeeping and reporting, 5:5
  Election information from agencies other than FEC, 10:8
  Excess campaign funds, 6:3, 12:3
  Pre-election report by nonauthorized committee, 5:5
  Presidential general elections
    -Public financing of, 8:7
    -Support of publicly funded candidates, 9:9
  Separate segregated fund, name of, 7:10
  Terminating reporting obligations, 6:2, 12:3

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THE FEDERAL ELECTION COMMISSION

RECORD

1325 K Street N.W., Washington, D.C. 20463

Volume 6, Number 1

January 1980

FEDERAL ELECTION CAMPAIGN ACT AMENDED

On December 20, 1979, just as this month's *Record* went to press, the House passed H.R. 5010, which contains major amendments to the Federal Election Campaign Act. The same bill had passed the Senate on December 18, 1979. H.R. 5010 substantially changes the reporting and bookkeeping requirements that apply to all federal candidates and all political committees. The February *Record* will provide detailed information on these amendments to the Act.

PUBLICATIONS

NEW CAMPAIGN GUIDE FOR PRESIDENTIAL CANDIDATES AND THEIR COMMITTEES

The Commission recently published the *Campaign Guide for Presidential Candidates and Their Committees*. This latest *Guide* focuses on the application of the Act and Commission Regulations to all Presidential candidates and their committees. For those candidates who qualify, or think they might qualify, for public funding for the primary election, a special chapter is included on the Primary Matching Payment Program. The *Guide* also covers: Contributions and Expenditures; Starting, Conducting and Terminating the Campaign; and Keeping Records and Filing Reports. The appendices to the *Guide* contain additional information on public funding expenditure limits, independent expenditures, a recommended procedure for recording contributions and guidelines for joint fundraising.

The *Guide,* which is printed as a binder insert, has been sent to all registered Presidential candidates and their authorized committees. Additional copies of the *Guide* are available from the Office of Public Communications.

INFORMATION

1980 PRESIDENTIAL PRIMARIES

According to information received from the Secretaries of State, each of the states below has established the indicated date for its Presidential primary.

Alabama	March 11
Arkansas	May 27 (D)
California	June 3
Connecticut	March 25
District of Columbia	May 6
Florida	March 11
Georgia	March 11
Idaho	May 27
Illinois	March 18
Indiana	May 6
Kansas	April 1
Kentucky	May 27
Louisiana	April 5
Maryland	May 13
Massachusetts	March 4
Michigan	May 20
Montana	June 3
Nebraska	May 13
Nevada	May 27
New Hampshire	February 26
New Jersey	June 3
New Mexico	June 3
New York	March 25
North Carolina	May 6
Ohio	June 3
Oregon	May 20
Pennsylvania	April 22
Puerto Rico	February 17 (R) March 16 (D)
Rhode Island	June 3
South Carolina	March 8 (R)
South Dakota	June 3
Tennessee	May 6
Texas	May 3 (R)
Vermont	March 4
West Virginia	June 3
Wisconsin	April 1

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OPINIONS

ADVISORY OPINION REQUESTS

Advisory Opinion Requests (AOR's) pose questions on the application of the Act or Commission Regulations to specific factual situations described in the AOR. The following chart lists recent AOR's, with a brief description of the subject matter, the date the requests were made public and the number of pages of each request. The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject	Date Made Public	No. of Pages
1979-68	Transfer of funds between affiliated committees.	11/23/79	2
1979-69	Solicitation of "associate" members of trade association by trade association's PAC; whether corporation's purchase of timber cutting rights on federal land confers federal contractor status on corporation.	11/29/79	4
1979-70	Corporate PAC's publication of responses by all Presidential candidates to corporation's questions on selected public issues.	11/29/79	5
1979-71	Reporting requirements for PAC making contributions to Presidential candidate involved in state caucus.	11/30/79	2
1979-72	PAC reimbursement to parent organization for fundraising costs related to entertainment and raffle.	12/5/79	6
1979-73	Proper allocation of salaries and expenses of Presidential campaign's advance staff.	12/7/79	2
1979-74	Lobbyist's continued employment by corporations during his candidacy for federal office.	12/11/79	4
1979-75	Combined fundraising for federal and non-federal elections by PAC and its state and local chapters.	12/11/79	4
1979-76	PAC's acceptance of corporate check in payment for book published by PAC.	12/12/79	1
1979-77	Permissible activities of and solicitations by PAC of limited partnership.	12/12/79	4
1979-78	Limitations on honoraria income of federal officeholders.	12/13/79	1

ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR's. Any qualified person who has requested an AO and acts in accordance with the opinion will not be subject to any sanctions under the Act. Other persons may rely on the opinion if they are involved in a specific activity which is indistinguishable in all material aspects from the activity discussed in the AO. Those seeking guidance for their own activity, however, should consult the full text of an AO and not rely only on the summary given here.

AO 1979-56: Affiliation of Political Action Committees

The proposed political action committee of Brunswick, a joint venture corporation established by Scott Paper Company and the Mead Corporation, would be affiliated with the political action committees of both parent corporations (SCOTTPAC and MEADPAC). The management agreement between Scott and Mead gives each corporation the authority to appoint and remove executive officers and board members of Brunswick and otherwise influence decisions made by Brunswick.

When one organization has the authority to influence the decisions of officers or members of another organization, Commission Regulations provide that all political committees established by those organizations are affiliated. 11 CFR 100.14(c)(2)(ii) and 110.3(a)(1)(iii). Thus, Brunswick's proposed political action committee would be affiliated with both SCOTTPAC and MEADPAC. Contributions made by SCOTTPAC and Brunswick's proposed committee would be considered to have been made by a single committee. Similarly, contributions made by MEADPAC and Brunswick's proposed committee would be considered to have been made by a separate single committee. 2 U.S.C. §441a(a)(5). Although the proposed Brunswick committee would be affiliated with both SCOTTPAC and MEADPAC, the Commission found no basis for concluding, from the facts presented in the request, that SCOTTPAC and MEADPAC were affiliated with each other. Commissioners Joan Aikens and Max L. Friedersdorf filed a dissenting opinion. (Date Issued: December 19, 1979; Length, including dissenting opinion: 7 pages)

AO 1979-59: Solicitation of Personnel Living Abroad

The Container Corporation Political Action Committee may solicit executive employees of the Container Corporation (the Corporation) who are United States citizens assigned to a Corporation office in a foreign country. The

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Act prohibits contributions by foreign nationals (2 U.S.C. §441e), but American citizens living abroad are not included in that category. All contributions from the Corporation's foreign-based employees are subject to all applicable limits and prohibitions of the Act. (Date Issued: November 29, 1979; Length: 2 pages)

AO 1979-60: Deduction Plan Contributions

The Hoisting and Portable Engineers Local Union 101 (the Union) may solicit contributions to its 101 Political Fund (the PAC) by using a plan which would permit union members to authorize the deduction of a portion of the monies paid to their vacation fund. The amounts deducted would be transferred to the PAC. The plan would be permissible, however, only if the sample authorization, proposed by the Union, were modified to reflect the contributor's right to donate more or less than the amount specified on the authorization card. Commission Regulations require that, although a contribution guideline may be suggested, any solicitation must inform contributors of their right to contribute more or less than the suggested guideline, and the guideline may not be enforced by the union. 11 CFR 114.5(a)(2). (Date Issued: November 29, 1979; Length: 4 pages)

AO 1979-63: Prohibited Transfer of Corporate Funds

The Veterans of Foreign Wars Political Action Committee (VFW-PAC), the separate segregated fund of the Veterans of Foreign Wars (the Corporation), may not accept unsolicited donations, consisting of membership dues and the proceeds from the sale of food and beverages, from local posts and auxiliaries. The Act prohibits a corporation from contributing general treasury funds (e.g., membership dues) to its separate segregated fund, and also prohibits a separate segregated fund from using funds obtained in commercial transactions conducted by local posts and auxiliaries (e.g., the sale of food and beverages). It would be permissible, however, for the Corporation to use these funds to pay for the administrative expenses of VFW-PAC and for the solicitation of contributions to VFW-PAC. 11 CFR 114.1 (b) and 114.5(b). (Date Issued: December 10, 1979; Length: 2 pages)

AO 1979-64: Application of the Act to Legislative Support Organization

The Tourism Caucus may solicit and accept corporate and individual funds without regard to the contribution limitations and prohibitions of the Act. The Tourism Caucus, a legislative support organization created by 112 Members of Congress to "promote and expand the economic viability of the American industry and the jobs of its workers," does not expect to become a political committee as defined by the Act or to be involved in federal elections. This determination is based on the stated intention and proposed activities of the Caucus. The Commission expressed no opinion regarding application of the House or Senate Rules to the situation described. Those issues are not within the Commission's jurisdiction. (Date Issued: December 10, 1979; Length: 2 pages)

ADVISORY OPINION REQUESTS WITHDRAWN

Since November 1979, the following Advisory Opinion Requests have been withdrawn by their requesters:

- AOR 1979-29
- AOR 1979-54
- AOR 1979-61

COMPLIANCE

COMPLAINTS BASED ON NEWSPAPER ARTICLES

On November 15, 1979, the Commission determined that it would continue to investigate complaints that are based on documented, substantial news articles provided the complaints are signed, sworn and notarized. The Commission had previously questioned the propriety of such complaints because news articles are not within a complainant's personal knowledge and might contain inaccuracies. The General Counsel pointed out that, although the legislative history of the Act does not specifically address complaints based on news articles, Congress was concerned that complaints not be frivolous or malicious. In his view, that Congressional concern does not seem to preclude complaints based on well documented and substantial articles, provided that the complaints are signed, sworn and notarized as required by 2 U.S.C. §437g(a)(1). Furthermore, 11 CFR 111.2(b) provides the Commission with the discretion to reject any complaint for insubstantiality, whether or not it is based on a news article.

CORRECTION

In the November 1979 *Record,* three incorrect dates were published in MUR 592 (p. 5). In the *Complaint* section of the article, March 16, 1979, should have been March 16, 1978; and June 7, 1979, should have been June 7, 1978. In the *Commission Determination* section, December 15, 1978, should have been November 15, 1978.

STAFF

FEC NAMES NEW GENERAL COUNSEL

On December 6, 1979, FEC Chairman Robert O. Tiernan announced that Charles N. Steele had been appointed General Counsel of the FEC. Mr. Steele, who has been with the Commission since January 1976, had been Acting General Counsel since November 1, 1979. Previously, he had served as Associate General Counsel for Enforcement and Litigation. Mr. Steele received an A.B. from Harvard College in 1960 and an LL.B. from Harvard Law School in 1965. Prior to his employment with the FEC, Mr. Steele was a staff attorney with the Appellate Court Branch of the National Labor Relations Board.

AUDITS

PROGRESS OF AUDITS

The audit summary chart below provides cumulative information on the progress of FEC audits from 1976 through November 30, 1979. The chart includes data on the types of committees being audited, the status of those audits and the number of audits completed and available to the public. (For a full discussion of FEC audit policy, see the *Record,* January 1979, p. 5.)

AUDITS RELEASED TO THE PUBLIC

The Federal Election Campaign Act, as amended (the Act), requires candidates and political committees to file financial disclosure reports with the Commission. The Act also requires the Commission to audit campaigns of all Presidential candidates who receive public funds and to periodically audit the reports of other candidates and committees. Final audit reports are those that have been approved by the Commission. Interim audit reports (designated by an asterisk (*) in the list below) are those that have been discussed in an open Commission meeting but have not been approved by the Commission. Both final and interim audit reports are available to the press through the Press Office and to the general public through the Office of Public Records. The following is a chronological listing of audits released between November 12, 1979, and December 10, 1979:

Audit	Date Made Public
1. American Party Convention Arrangements Committee	11/16/79
2. Maryland Democratic Party/Voter Registration Drive	11/16/79
3. Charles Leland Ward, OK/3	11/20/79
4. Democratic National Committee/Campaign Victory Fund	11/27/79
5. Republican Party of Florida/Federal Campaign Account	11/27/79

Type of Committee Audited	Audits Required by Audit Policy	Field Work In Progress	Field Work Completed	Internal Review of Audit in Progress	Audits Completed & Released to Public	Audits To Be Scheduled
Presidential Candidate Public Financing (1976)	19	0	19	0	19	0
Presidential Candidate No Public Financing (1976)	17	0	17	11	6	0
Congressional Candidate Random (1976)	106	0	106	2	104	0
State Party	71	0	71	21	50	0
Congressional Party	9	0	9	0	9	0
National Party	20	3	17	13	4	0
Non-Party, Non-Candidate	51	2	29	18	11	20
Referral Audits*	9	0	9	6	3	0

*Referral Audits include candidates and committees, in categories not directly covered by the Audit Policy, which are referred to the Audit Division by the Reports Analysis Division or the Office of General Counsel.

PUBLIC FINANCING

FEC APPROVES ELIGIBILITY OF PRESIDENT CARTER FOR 1980 MATCHING FUNDS

On November 20, 1979, the Commission determined that President Jimmy Carter is eligible to receive primary matching fund payments for the 1980 Presidential primary election. The Commission determination followed a thorough review by the FEC Audit Division of the campaign committee's threshold submission. The Commission will certify actual payment by the U.S. Treasury to President Carter in December. The Act does not allow payment of any funds from the Presidential Primary Matching Payment Account until January 1, 1980.

REPAYMENT HEARING

On November 27, 1979, the Commission held a hearing, at the request of the Udall '76 Committee (the Committee), to provide the Committee with a final opportunity to contest the Commission's determination that the Committee must repay $62,449.22 in public funds to the U.S. Treasury. Of that amount, the Committee was only contesting $52,755.40, which represented undocumented and, therefore, unqualified campaign expenditures made by Mr. Udall's 1976 Presidential campaign.

After the FEC had completed audits of the national and state committees of the Udall '76 campaign, the Commission determined, on November 15, 1978, that the committees had not provided sufficient documentation for $163,614.50 in expenditures. As a result of the Committee's subsequent submission of more documentation, on October 19, 1979, the Commission reduced the required repayment (for undocumented and, therefore, unqualified campaign expenditures) to $52,755.40. At the hearing, Committee spokemen pointed out the difficulty of obtaining the required documentation for expenditures that had been made three years earlier.

Neither the Act nor current Regulations require a hearing to contest repayment determinations. (The current Regulation, 11 CFR 9038.2(b), provides only for submission of written information in repayment disputes.) However, former Section 134.2 of the Commission's Regulations (now superseded by 11 CFR 9038.2(b)) did provide for such a hearing. Because the former Regulations were in effect during the audits of the Udall committees, the hearing was held. In addition to the information provided at the hearing, the Committee was allowed to submit additional written information until December 10, 1979. When all the information has been submitted, the Commission will either reaffirm or modify its October 19, 1979, determination.

THE LAW IN THE COURTS

BARNSTEAD FOR CONGRESS COMMITTEE v. FEC et al.

On June 5, 1979, the U.S. District Court for the District of Columbia granted summary judgment to the FEC and dismissed a complaint which had been filed by the Barnstead Committee (the Committee) against the FEC, WGBH Educational Foundation (Public Broadcasting, TV Channel 2), the Corporation for Public Broadcasting and the Quaker Oats Corporation. The Committee had filed suit on January 1, 1979, disputing the Commission's dismissal of a complaint which the Committee had filed with the Commission on November 2, 1978. The Committee requested that the Court reverse the Commission's determination.

The Committee had alleged in its complaint, and repeated in its suit, that the corporate sponsorship of and payment for production and promotional costs of a televised film about House Speaker Tip O'Neill (Mr. Barnstead's opponent for a House seat) was in violation of 2 U.S.C. §441b. The Committee contended that, since Congressman O'Neill was officially a candidate at the time the film was broadcast, the film was ". . . in essence a campaign film, which enhanced the political standing of one candidate over another." Costs incurred in producing and broadcasting the film, therefore, were expenditures in connection with a federal election. The FEC, on the other hand, maintained that the costs incurred by WGBH Educational Foundation, the Corporation for Public Broadcasting and the Quaker Oats Corporation, in sponsoring the film, were exempt communication costs. Under §431(f)(4)(A), the Act exempts from the definition of expenditure certain communication costs, which include "any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee or candidate." In dismissing the suit, the Court upheld the Commission's determination that the costs involved in sponsoring the broadcast were, in fact, communication costs and not expenditures under the Act.

REMINDER

The year-end report is due on January 31, 1980. All filers should use the peel-off address labels from the envelopes containing the prior notice. These labels, which will assist the Commission in identifying the filing candidate or committee, should be placed in the address block on the front of the reporting form.

For details on year-end filing requirements, see the December 1979 *Record*, p. 1.

FEDERAL REGISTER NOTICES

The list below identifies all FEC documents which appeared in the *Federal Register* between November 12, 1979, and December 13, 1979. Copies of these notices are **not** available from the FEC.

Notice	Title	Federal Register Publication Date	Citation
1979-22	Availability of Opinion and Regulation Index Supplements	12/13/79	44 FR 72226

FEC PUBLIC APPEARANCES

To provide information on campaign finance laws and the FEC, the Commission regularly accepts invitations to address public gatherings. This regular column lists upcoming scheduled Commission appearances, the name of the sponsoring organization, the location of the event and the name of the Commission's speaker. For additional information on any appearance, please contact the **sponsoring organization.**

1/13-15	Clearinghouse Southeast Regional Seminar Conference on Election Administration Winston-Salem, North Carolina FEC Commissioners and Staff
1/16	FEC Campaign Finance Seminar Winston-Salem, North Carolina FEC Commissioners and Staff

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THE FEDERAL ELECTION COMMISSION

RECORD

1325 K Street N.W., Washington, D.C. 20463

Volume 6, Number 2

February 1980

LEGISLATION

FEDERAL ELECTION CAMPAIGN ACT AMENDED

On January 8, 1980, the 1979 amendments to the Federal Election Campaign Act of 1971 (previously amended in 1974 and 1976) became law (Public Law 96-187). The amendments will reduce recordkeeping and reporting requirements and expand the opportunities for political parties to participate in federal elections. Generally, the amendments will:

- Reduce the number of reports required (See "1980 Reports," p. 4).
- Reduce the number of contributions and expenditures that must be individually itemized on reports by raising to $200 the threshold for detailed information.
- Reduce the amount of detailed information required for itemizing disbursements.
- Eliminate registration and reporting requirements for authorized candidate committees with minimal campaign activity (less than $5,000 in annual contributions or expenditures).
- Eliminate altogether the candidate's responsibility for reporting.
- Reduce the amount of information required for registration.
- Increase from $500 to $1,000 the exemption for volunteer activities undertaken on behalf of candidates.
- Permit local political party units to engage in limited federal election campaign activity without having to register or report.
- Permit party political committees to engage in certain federal election activities without incurring a contribution or expenditure subject to the limitations.
- Extend exemptions for individual volunteer services and property, formerly limited to candidate-related activity, to party-related activity as well. Establish a monetary limit for such activity.
- Permit anyone to request an advisory opinion concerning the application of the law to a specific transaction or activity by the requester.
- Reduce the required time for state officials to preserve reports.
- Permit political committees (other than authorized committees), when filing their state reports, to file only that portion of the report that applies to candidates seeking election in the state where the report is filed.
- Retain an individual's right to file a notarized complaint with the Commission; alter Commission enforcement procedures.

To implement the 1979 amendments, the Commission must promulgate new Regulations by February 29, 1980. The amendments provide that this first set of Regulations may be prescribed by the Commission if neither House of Congress disapproves them within 15 legislative days, rather than the 30 legislative days normally required. (Subsequent Regulations, however, will be governed by the 30-day rule.) The FEC is preparing additional informational materials which will be sent to all *Record* subscribers as soon as they are available.

REGULATIONS

PROPOSED REGULATIONS ON CANDIDATE DEBATES

On December 27, 1979, the Commission submitted to Congress proposed Regulations on the financing and sponsorship of federal candidate debates. Previous candidate debate Regulations, proposed to Congress on June 12, 1979, were disapproved by the Senate on September 18, 1979. After the Senate's disapproval, the Commission held public hearings on October 23 and 24, 1979. (See *Record*, December 1979, p. 2.) The Regulations submitted by the Commission on December 27, 1979, provide that:

1. **Funds From Certain Organizations to Stage Nonpartisan Candidate Debates Are Neither Contributions Nor Expenditures**

   The proposed Regulations exempt from the definition of contribution or expenditure funds spent by certain nonprofit organizations and bona fide news media corporations to stage nonpartisan candidate debates. Since the educational purpose of nonpartisan candidate debates is similar to the purpose underlying the Act's exemption of nonpartisan voter registration and get-out-the-vote activities, the proposed Regulations provide a similar exemption.

continued

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2. **Certain Nonprofit Organizations and Bona Fide News Media Corporations May Stage Candidate Debates**
   The proposed Regulations permit nonprofit organizations which do not endorse, support or oppose political candidates or political parties to stage nonpartisan debates. Specifically included are:

   a. All organizations exempt from federal taxation under 26 U.S.C. §501(c)(3). (Under the tax code, these organizations are prohibited from participating in or intervening in any political campaign.)
   b. Any organization exempt from federal taxation under 26 U.S.C. §501(c)(4), provided it does not engage in any political campaign activities.

   The proposed Regulations also permit broadcasters, bona fide newspapers, news gathering services, magazines and other periodical publications to stage nonpartisan candidate debates. The proposed Regulations define "bona fide," and specifically exclude from that definition news media that are owned or controlled by a political party, political committee or candidate, and periodical publications which are house organs.

3. **Debate Structure Is Left to the Discretion of the Staging Organization**
   Rather than prescribing a precise structure for the debates, the proposed Regulations specify only a general standard. To be considered nonpartisan, a debate must:

   a. Include at least two candidates; and
   b. Not promote or advance one candidate over another.

4. **Labor Organizations and Corporations May Contribute to Nonprofit Nonpartisan Staging Organizations**
   In the same way that labor organizations and corporations are permitted to donate funds for registration and get-out-the-vote activities conducted in conjunction with a nonprofit organization, the proposed Regulations permit them to donate funds to nonprofit, nonpartisan organizations for the staging of candidate debates.

   Broadcasters, newspapers, magazines and other periodicals are also permitted to use their own funds to stage nonpartisan debates. Consistent with ordinary practice and applicable Federal Communications Commission (FCC) regulations, broadcasters may accept both regular commercial advertising and underwriting by corporations and labor organizations to finance the broadcast of debates staged or covered by the broadcaster. Similarly, newspapers, magazines and other periodicals may accept regular paid advertising in an issue which covers a debate, whether staged by the newspaper or another entity. Broadcasters, newspapers, magazines and other periodicals may not, however, accept direct corporate or labor organization payments (other than for regular commercial advertising) to finance the staging of debates.

   In accordance with the Act, the proposed Regulations may be promulgated by the Commission if neither House of Congress disapproves them within 30 legislative days of their submission.

COMMISSION PRESCRIBES CONVENTION FINANCING REGULATIONS

On December 20, 1979, the Commission formally prescribed new Regulations that define the process by which political parties may qualify for public funds to finance their national nominating conventions. (For a detailed summary of the Convention Financing Regulations, see *Record,* December 1979, p. 2.)

The Commission submitted the proposed Regulations to Congress on October 26, 1979. The law stipulates that proposed Regulations may be promulgated 30 legislative days after their submission, unless either the House or the Senate disapproves them before that time has elapsed. This 30-day legislative period expired on December 20, 1979, without disapproval by either the House or Senate.

The new Regulations were published, in their entirety, in the *Federal Register* on November 1, 1979. Technical amendments were published in the *Federal Register* on December 31, 1979.

FEDERAL REGISTER NOTICES

The list below identifies all FEC documents which appeared in the *Federal Register* between December 14, 1979, and January 7, 1980. Copies of these notices are **not** available from the FEC.

Notice	Title	Federal Register Publication Date	Citation
1979-23	Multicandidate Political Committee Index; Announcement of Availability	12/27/79	44 FR 76731
1979-24	Funding and Sponsorship of Federal Candidate Debates; Transmittal of Regulations to Congress	12/27/79	44 FR 76734
1979-25	Presidential Election Campaign Fund; Federal Financing of Presidential Nominating Convention; Correction	12/31/79	44 FR 77137
1979-26	Presidential Election Campaign Fund; Federal Financing of Presidential Nominating Conventions; Final Rule; Announcement of Effective Date and Deletion of Existing Regulations	12/31/79	44 FR 77136

The RECORD *is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Robert O. Tiernan, Chairman; Max L. Friedersdorf, Vice Chairman; Joan D. Aikens; Thomas E. Harris; John W. McGarry; Frank P. Reiche; J.S. Kimmitt, Secretary of the Senate, Ex Officio; Edmund L. Henshaw, Jr., Clerk of the House of Representatives, Ex Officio. For more information, call 202/523-4068 or toll-free 800/424-9530.*

OPINIONS

ADVISORY OPINION REQUESTS

Advisory Opinion Requests (AOR's) pose questions on the application of the Act or Commission Regulations to specific factual situations described in the AOR. The following chart lists recent AOR's, with a brief description of the subject matter, the date the requests were made public and the number of pages of each request. The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject	Date Made Public	No. of Pages
1979-79	Effect of contemplated contributions on affiliated status of committees opposing same candidate.	12/19/79	1
1979-80	Effect of relationships between vendors employed by both a candidate and a political committee on political committee's capacity to make independent expenditures to defeat opponent of same candidate.	12/26/79	7
1979-81	Candidate's reporting obligations for free use of state-owned facility for fundraiser.	1/8/80	1
1979-82	Transfers from authorized committee of candidate for federal office to committee of another candidate for state office.	1/8/80	1
1980-1	Solicitation of agents paid on commission basis for contributions to corporation's separate segregated fund.	1/10/80	1
1980-2	Reporting obligations of nonfederal committee for payroll deduction contributions.	1/14/80	1

ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR. Under the 1979 amendments to the Act, any person may request an AO on a specific activity which the person intends to undertake. The requester will not be subject to any sanctions under the Act if he/she acts in accordance with the opinion. Other persons may rely on the opinion if they are involved in a specific activity which is indistinguishable in all material aspects from the activity discussed in the AO. Those seeking guidance for their own activity, however, should consult the full text of an AO and not rely only on the summary given here.

AO 1979-65: Relationship Between Inactive Draft Committee and Authorized Committee

Officers and personnel of the Virginia Democrats for Leadership and Commitment (the Committee), a draft Kennedy committee which is inactive for all purposes except debt satisfaction, may, as individuals, communicate and cooperate with the Kennedy Presidential campaign without creating a relationship between the Committee and the Kennedy campaign committee. The facts presented by the Committee do not suggest that the individuals involved would simultaneously be officers or principals of two active committees raising funds for a federal election or that they would become officers of the Kennedy campaign. Assuming that there was no coordination between Committee personnel and agents of Senator Kennedy before the Committee became inactive, and provided that no Kennedy campaign personnel participate in the only activity contemplated by the Committee (payment of outstanding debts), Committee personnel may participate as individuals in the Kennedy campaign without effect on the Committee. (Date Issued: December 12, 1979; Length: 3 pages)

AO 1979-71: Committee's Pre-Election Reporting Obligations

PASPAC, the separate segregated fund of the El Paso Company, need not file a pre-election report for the January 1980 Iowa Presidential caucuses since its contributions to a Presidential candidate have already been disclosed in a previous PASPAC report and because the Iowa caucuses are not "elections" under the Act. The Iowa precinct caucuses do not constitute an election under 2 U.S.C. §431(a) because they do not:

1. Have the authority to nominate a Presidential candidate;
2. Express a preference for Presidential nominees by a formal primary ballot process; or
3. Select delegates to a national nominating convention by a formal primary ballot process.

The caucuses only select delegates to county conventions of the political parties. The fact that the caucuses are not an "election" has no effect on the application of the contribution or expenditure limits. (Date Issued: December 21, 1979; Length: 5 pages)

PUBLIC FINANCING

FEC APPROVES ELIGIBILITY OF TWO MORE CANDIDATES FOR 1980 MATCHING FUNDS

The Commission has determined that both Lyndon LaRouche and Senator Edward Kennedy have established their eligibility to receive primary matching fund payments for the 1980 Presidential primary election. Mr. LaRouche and Senator Kennedy established their eligibility on December 18, 1979, and January 3, 1980, respectively. The Commission's determinations followed a review by the FEC Audit Division of the candidates' threshold submissions. With respect to the determination of Mr. LaRouche's eligibility, Commissioner Frank Reiche stated: "I am voting for it solely on the advice of the Commission's counsel to the effect that we should certify eligibility for matching fund payments unless we have found patent irregularities which suggest the possibility of fraud. Thus far, no such irregularities have apparently been found." Commissioner Thomas E. Harris concurred with Commissioner Reiche's statement.

STATISTICS

INDEX TO MULTICANDIDATE COMMITTEES

On December 15, 1979, the FEC released a new *Index of Multicandidate Political Committees*. Notification of the availability of the Index was published in the *Federal Register* on December 27, 1979. A "multicandidate committee" is defined under the Act as a committee registered for at least six months, which has received contributions from more than 50 persons and, except in the case of state party organizations, has made contributions to five or more candidates for federal office. A multicandidate committee is permitted to contribute up to $5,000 to each federal candidate, per election. Contributions made by any political committee affiliated with a multicandidate committee count against that multicandidate committee's $5,000 limit.

The *Multicandidate Committee Index* contains two sections: party-related committees and nonparty-related committees. It is based on a review of reports and statements filed with the Commission, the General Accounting Office, the Clerk of the U.S. House of Representatives and the Secretary of the U.S. Senate since April 7, 1972. Committees which have met the qualifications for "multicandidate committee" prior to January 1, 1975, were determined to have been qualified as of January 1, 1975, the effective date of the 1974 amendments to the Federal Election Campaign Act. In addition, the Index specifically identifies the connected or affiliated organization(s) reported by each committee.

The Index includes each committee's date of registration and the date it qualified as a multicandidate committee, either on its own or through affiliation with another qualified multicandidate committee. The Index may be used to verify the contributing committee's status as a "multicandidate committee" qualified to give up to $5,000.

Notices of the availability of the next Index updates will be published in the *Record*. Upon written request and advanced payment of $4 per copy, the current Index is available from the Commission's Office of Public Records, 1325 K Street, N.W., Washington, D.C. 20463.

COMPLIANCE

FEC PUBLISHES NAMES OF NONFILERS

On December 19, 1979, the FEC published the names of 304 nonfilers who failed, under the Federal Election Campaign Act of 1971, as amended in 1974 and 1976, to file the required October 10 quarterly campaign finance report. Nonfilers included federal candidates, their principal campaign committees and other political committees from 43 states and the District of Columbia. Three political party committees, composed of American citizens living abroad, were also included among the nonfilers.

FEC PUBLIC APPEARANCES

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2/7	Chamber of Commerce PAC Seminar San Francisco, California Bill Loughrey, Assistant Staff Director
2/11	American Institute of CPA's Training Conference on Federal Election Compliance Washington, D.C. Chairman Tiernan
2/12	Capital Associated Industries, Inc. Raleigh, North Carolina Commissioner Aikens

REPORTS

1980 REPORTS

The charts on the following pages, which provide filing dates for reports required during 1980, reflect the 1979 amendments to the Act. Those familiar with the election law should note the following changes contained in the 1979 amendments:

1. The post-primary report has been eliminated;
2. Pre-election reports are required at an earlier date; and
3. Quarterly reports are due on the 15th rather than the 10th day after the close of the calendar quarter.

GENERAL ELECTION

Date of Election:	November 4
Pre-Election Report	
Closing Date of Books:	October 15
Mailing Date:	October 20
Filing Date:	October 23
Post-Election Report	
Closing Date of Books:	November 24
Filing Date:	December 4

FILING DATES – 1980 REPORTS

PRIMARY ELECTION REPORTS CONGRESSIONAL		12-Day Pre-Election Report		
State	Date of Election	Closing Date of Books	Mailing Date (if sent by registered or certified mail)	Filing Date
*Alabama	September 2	August 13	August 18	August 21
Runoff	September 23	September 3	September 8	September 11
*Alaska	August 26	August 6	August 11	August 14
*Arizona	September 9	August 20	August 25	August 28
*Arkansas	May 27	May 7	May 12	May 15
Runoff	June 10	May 21	May 26	May 29
*California	June 3	May 14	May 19	May 22
*Colorado	September 9	August 20	August 25	August 28
*Connecticut	September 9	August 20	August 25	August 28
Delaware	September 6	August 17	August 22	August 25
District of Columbia	May 6	April 16	April 21	April 24
*Florida	September 9	August 20	August 25	August 28
Runoff	October 7	September 17	September 22	September 25
*Georgia	August 12	July 23	July 28	July 31
Runoff	September 2	August 13	August 18	August 21
Guam	September 6	August 17	August 22	August 25
*Hawaii	September 20	August 31	September 5	September 8
*Idaho	May 27	May 7	May 12	May 15
*Illinois	March 18	February 27	March 3	March 6
*Indiana	May 6	April 16	April 21	April 24
*Iowa	June 3	May 14	May 19	May 22
*Kansas	August 5	July 16	July 21	July 24
*Kentucky	May 27	May 7	May 12	May 15
*Louisiana	September 20	August 31	September 5	September 8
Maine	June 10	May 21	May 26	May 29
*Maryland	May 13	April 23	April 28	May 1
Massachusetts	September 16	August 27	September 1	September 4
Michigan	August 5	July 16	July 21	July 24
Minnesota	September 9	August 20	August 25	August 28
Mississippi	June 3	May 14	May 19	May 22
Runoff	June 24	June 4	June 9	June 12

continued

State	Date of Election	12-Day Pre-Election Report		
		Closing Date of Books	Mailing Date (if sent by registered or certified mail)	Filing Date
*Missouri	August 5	July 16	July 21	July 24
Montana	June 3	May 14	May 19	May 22
Nebraska	May 13	April 23	April 28	May 1
*Nevada	September 9	August 20	August 25	August 28
*New Hampshire	September 9	August 20	August 25	August 28
New Jersey	June 3	May 14	May 19	May 22
New Mexico	June 3	May 14	May 19	May 22
*New York	September 9	August 20	August 25	August 28
*North Carolina	May 6	April 16	April 21	April 24
Runoff	June 3	May 14	May 19	May 22
*North Dakota	September 2	August 13	August 18	August 21
*Ohio	June 3	May 14	May 19	May 22
*Oklahoma	August 26	August 6	August 11	August 14
Runoff	September 16	August 27	September 1	September 4
*Oregon	May 20	April 30	May 5	May 8
*Pennsylvania	April 22	April 2	April 7	April 10
Puerto Rico	May 25	May 5	May 10	May 13
Rhode Island	September 9	August 20	August 25	August 28
*South Carolina	June 10	May 21	May 26	May 29
Runoff	June 24	June 4	June 9	June 12
*South Dakota	June 3	May 14	May 19	May 22
Tennessee	August 7	July 18	July 23	July 26
Texas	May 3	April 13	April 18	April 21
*Utah	September 9	August 20	August 25	August 28
*Vermont	September 9	August 20	August 25	August 28
Virginia	June 10	May 21	May 26	May 29
Virgin Islands	September 9	August 20	August 25	August 28
*Washington	September 16	August 27	September 1	September 4
West Virginia	June 3	May 14	May 19	May 22
*Wisconsin	September 9	August 20	August 25	August 28
Wyoming	September 9	August 20	August 25	August 28

*States holding Senate elections.

MONTHLY REPORTS

Month	Period Covered	Filing Date
February	1/1 - 1/31	February 20
March	2/1 - 2/29	March 20
April	3/1 - 3/31	April 20
May	4/1 - 4/30	May 20
June	5/1 - 5/31	June 20
July	6/1 - 6/30	July 20
August	7/1 - 7/31	August 20
September	8/1 - 8/31	September 20
October	9/1 - 9/30	October 20
Pre-Election	10/1 - 10/20	October 23
Post-Election	10/21 - 11/24	December 4
Year-End	11/25 - 12/31	January 31, 1981

QUARTERLY REPORTS*

Quarter	Close of Books	Filing Date (and mailing date if sent by registered or certified mail)
First	March 31	April 15
Second	June 30	July 15
Third	September 30	October 15
Fourth (Year-End)	December 31	January 31, 1981

***Quarterly Waiver**: If a pre-election report is due within the period beginning on the 5th day and ending on the 15th day after the close of a calendar quarter, the quarterly report is waived.

THE LAW IN THE COURTS

LITIGATION STATUS INFORMATION

The following is a list of new litigation involving the Commission, together with the date the suit was filed, the Court involved, the Docket Number and a brief description of the major issue(s) involved in the case. Persons seeking additional information on a particular case should contact the Court where the suit is filed or the Commission.

Stewart Mott, Rhonda Stahlman and the National Conservative Political Action Committee v. FEC, U.S. District Court for the District of Columbia, Docket No. 79-3375, December 17, 1979.

Plaintiffs challenge the constitutionality of certain provisions of the Federal Election Campaign Act, as amended in 1974 and 1976 (the Act), certain FEC Regulations, certain advisory opinions, an informational letter and an opinion of counsel letter issued by the FEC. Plaintiffs allege that the challenged sections of the Act, Regulations, advisory opinions and written interpretations by the FEC regulate independent political activity in an unconstitutional and unlawful manner by prescribing limitations upon contributions from individuals, groups and political committees to other individuals, groups and political committees which, in turn, make independent expenditures as defined by the Act. Plaintiffs also allege that the challenged sections, Regulations, advisory opinions and other written interpretations further define the terms "contribution" and "political committee" in unconstitutionally broad and vague language.

INFORMATION

FEC ESTABLISHES FEE SCHEDULE FOR COMMISSION INFORMATION

On December 13, 1979, the Commission approved the following schedule of fees for reproducing Commission information for public use:

Paper copies reproduced by Kodak, IBM and Xerox copiers	$.05 per page plus $2.50 per half hour of search time after the first half hour.
Paper copies produced at lab from microfilm	$.10 per page.
Paper copies from microfilm reader-printers	$.10 per page plus $2.50 per half hour of search time after the first half hour.
Transcripts of tape recorded matter	$3.00 per page.
Record certification	$2.00 per order.
Microfilm Index	$1.00 per reel.
Microfilm documents	$10.00 per reel.
Multicandidate Committee Index	$4.00
Index of Committee/Sponsor or Sponsor/Committee	$5.00 each.
Office Account Index	$1.00
Advisory Opinion Index	$2.50
Reports on Financial Activity or Disclosure Series	$5.00 per volume.
Presidential Financial Control and Compliance Manual	$7.50

continued

Requests for twenty or fewer computer indexes (A, B, C, D, E indexes or variations thereof and G index of a candidate or committee)	No charge.
Requests for more than twenty indexes or a computer search of the entire individual contributor file for a particular individual Lesser of: 1) $.0008 per CRU (Computer Resource Unit) plus $.01 per page; or 2) where copies of existing indexes can be made, the charges specified in above listing.	
Computer tapes	Determined at the end of each two-year cycle.

For additional information, contact the Public Records Office, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463; or telephone 202/523-4181, toll-free 800/424-9530.

AUDITS

AUDITS RELEASED TO THE PUBLIC

The Federal Election Campaign Act, as amended (the Act) requires candidates and political committees to file financial disclosure reports with the Commission. The Act also gives the Commission authority to audit campaigns of all Presidential candidates who receive public funds and the reports of other candidates and committees. Final audit reports are those that have been approved by the Commission. Interim audit reports (designated by an asterisk (*) in the list below) are those that have been discussed in an open Commission meeting but have not been approved by the Commission. Both final and interim audit reports are available to the press through the Press Office and to the general public through the Office of Public Records. The following is a chronological listing of audits released between December 10, 1979, and January 7, 1980:

	Audit	Date Made Public
1.	Rick Tonry Campaign Committee Tonry for Congress Campaign Committee, LA/1	12/11/79
2.	McCarthy '76 Michigan (Lansing Area)	12/14/79
3.	National Committee for an Effective Congress	12/14/79
4.	Democratic National Committee, Travel Escrow Account	12/16/79
5.	Idaho State Democratic Central Committee	12/26/79
6.	Connecticut Republican Federal Campaign Committee	12/26/79
7.	National Republican Heritage Groups (Nationalities) Council	12/26/79

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THE FEDERAL ELECTION COMMISSION

RECORD

1325 K Street N.W., Washington, D.C. 20463

Volume 6, Number 3

March 1980

STATISTICS

FEC RELEASES FIRST REPORT ON SELECTED 1980 PRESIDENTIAL CANDIDATES

On January 25, 1980, the FEC released its first statistical report on the financial activity of all Presidential campaigns which have exceeded $100,000 in total receipts or disbursements (*FEC Report On Financial Activity, 1979-1980, Interim Report No. 1, Presidential Pre-Nomination Campaigns*). The *Report*, first in a series to be published monthly during the primary season, also includes information on all draft movements above the $100,000 level. The *Report* covers the financial activity of 13 Presidential campaigns from their inception through September 30, 1979, and provides a complete breakdown of both receipts ($17.7 million) and disbursements ($15.1 million). Additional tables show further detail:

- Contributions from individuals are categorized by dollar amount. For each category the *Report* shows the number of contributions, the aggregate value of those contributions and the percentage of all individual contributions which they represent.
- Itemized individual contributions over $100 are categorized on a state-by-state basis to show the number and value of such contributions which a campaign received from a given state and the percentage of all contributions which they represent.
- PAC contributions are presented according to political committee type (e.g., corporate, labor, etc.) and the date on which the contribution was received.
- Matching fund activity is listed.
- Expenditures subject to limits and the state-by-state spending limit figures are included in the *Report*, but are incomplete for 1979. As more campaigns enter the matching fund process, more complete information will be available in future reports.

The monthly reports will provide a broad overview of all financial activity at the Presidential level throughout the entire primary season. Copies of the January *Report* are available, at $2.50 per copy, from the Commission's Office of Public Records, 1325 K Street, N.W., Washington, D.C. 20463; or telephone 202/523-4181, toll-free 800/424-9530.

REPORTS

SPECIAL ELECTION IN PENNSYLVANIA

A special general election will be held in Pennsylvania on April 9, 1980. The principal campaign committees of all candidates involved in that election will receive a special notice from the FEC on their reporting requirements and filing dates. All other committees supporting candidates in the special election in Pennsylvania should contact the Commission for information on required reports. Information may be obtained by calling 202/523-4068 or toll-free 800/424-9530.

NEW PROCEDURES FOR SPECIAL ELECTION REPORTS

The 1979 Amendments to the Federal Election Campaign Act require the Commission to establish filing dates for required reports within five days of the setting of the date for a special election. The Commission is also required to publish the dates and notify the principal campaign committees of all candidates involved in the special election of those reporting dates. To implement the amendments, the Commission adopted procedures on January 31, 1980 (Agenda Document 80-42), which state that:

1. The Reports Analysis Division will identify the dates of all special elections and, within 48 hours after each identification, will establish filing dates for required reports, subject to the Commission's approval;
2. Within one day of the Commission's approval of the filing dates, a notice will be prepared by the Office of General Counsel for publication in the *Federal Register* and
3. The Information Division will send a prior notice to all principal campaign committees registered for the special election and to all individuals listed on the special election ballot.

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CORRECTION

The "Monthly Reports" chart on page 7 of the February *Record* contained incorrect dates for the periods covered by the pre-election and post-election reports. The corrected chart appears below.

MONTHLY REPORTS

Month	Period Covered	Filing Date
February	1/1 - 1/31	February 20
March	2/1 - 2/29	March 20
April	3/1 - 3/31	April 20
May	4/1 - 4/30	May 20
June	5/1 - 5/31	June 20
July	6/1 - 6/30	July 20
August	7/1 - 7/31	August 20
September	8/1 - 8/31	September 20
October	9/1 - 9/30	October 20
Pre-Election	10/1 - 10/15	October 23
Post-Election	10/16 - 11/24	December 4
Year-End	11/25 - 12/31	January 31, 1981

OPINIONS

ADVISORY OPINION REQUESTS

Advisory Opinion Requests (AOR's) pose questions on the application of the Act or Commission Regulations to specific factual situations described in the AOR. The following chart lists recent AOR's, with a brief description of the subject matter, the date the requests were made public and the number of pages of each request. The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject	Date Made Public	No. of Pages
1980-3	New political party's status as a national party committee.	1/15/80	6
1980-4	Legal services donated to Presidential committee for defense in civil suit.	1/15/80	4
1980-5	Application of the Act to expenses of delegates to national nominating convention of Democratic party.	1/15/80	1
1980-6	Permissible methods of soliciting member contributions for separate segregated fund.	1/23/80	1
1980-7	Contributions by state bank, a wholly-owned subsidiary of a federally chartered corporation to candidates for state office.	1/25/80	2
1980-8	Transfer of funds from federal to state PAC.	1/30/80	1
1980-9	Fundraising letter as independent expenditure.	2/4/80	1
1980-10	PAC's compliance with 1979 amendment requiring identification of connected organization in name of separate segregated fund.	2/6/80	1
1980-11	Contributions made in spouse's name drawn on individual's sole account.	2/11/80	1
1980-12	Several questions on application of Act to Congressional campaign.	2/11/80	3

ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR. Under the 1979 amendments to the Act, any person may request an AO on a specific activity which the person intends to undertake. The requester will not be subject to any sanctions under the Act if he/she acts in accordance with the opinion. Other persons may rely on the opinion if they are involved in a specific activity which is indistinguishable in all material aspects from the activity discussed in the AO. Those seeking guidance for their own activity, however, should consult the full text of the AO and not rely only on the summary given here.

AO 1979-66: Notice in Trade Association's Publications

The Associated General Contractors of America (the Association), a trade association, may publish in two of the Association's publications a notice regarding the financial activity of its separate segregated fund, AGC-PAC. One of the publications is circulated to nonmembers as well as members; the other is circulated to members only. Since the notice does not encourage readers to support AGC-PAC activities or provide information on how they may contribute to AGC-PAC, the notice does not constitute a "solicitation" under the Act. (The Act specifically restricts "solicitations" by a separate segregated fund to the membership of its sponsoring association. 2 U.S.C. §437f.) Chairman Robert O. Tiernan and Commissioner Thomas E. Harris filed a dissenting opinion. (Date Issued: January 30, 1980; Length, including dissent: 3 pages)

AO 1979-67: Teacher Intern Program

Scholarships awarded for services provided to the Republican National Committee (RNC), to the Democratic Nation-

The RECORD *is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Robert O. Tiernan, Chairman; Max L. Friedersdorf, Vice Chairman; Joan D. Aikens; Thomas E. Harris; John W. McGarry; Frank P. Reiche; J.S. Kimmitt, Secretary of the Senate, Ex Officio; Edmund L. Henshaw, Jr., Clerk of the House of Representatives, Ex Officio. For more information, call 202/523-4068 or toll-free 800/424-9530.*

al Committee (DNC) or to any Senate or Congressional staff by graduate students participating in an intern program sponsored by the George Peabody College for Teachers of Vanderbilt University would not be considered in-kind contributions under the Act. Since the basic purpose of the intern program is educational and if the interns do not devote substantial time to federal election campaign purposes, the compensated interns' services would not constitute in-kind contributions. The Peabody Center, as sponsor of the program, would not be considered a political committee under the Act. 2 U.S.C. §§431(8) and (9). To the extent that the interns' activities are not related to campaigns for federal office, funds contributed to or spent by the Peabody Center to defray the cost of the program would not be subject to the Act's limits or prohibitions on contributions. Commissioners Joan D. Aikens, Max L. Friedersdorf and John W. McGarry filed a concurring opinion. (Date Issued: February 11, 1980; Length, including concurring opinion, 7 pages)

AO 1979-68: Solicitations by Membership Organization's Separate Segregated Fund

The Illinois Medical Political Action Committee (IMPAC), a separate segregated fund established by the Illinois State Medical Society (ISMS), may solicit contributions in conjunction with an annual dues statement for ISMS and the American Medical Association (AMA), the national association with which ISMS is affiliated. IMPAC may also make unlimited transfers of funds to the AMA's separate segregated fund, the American Medical Political Action Committee (AMPAC), since IMPAC is affiliated with AMPAC. (Date Issued: January 11, 1980; Length: 2 pages)

AO 1979-70: General Public Communication by Separate Segregated Fund

The LTV Corporation Active Citizenship Campaign (LTV/ACC), a separate segregated fund of the LTV Corporation, may pay the costs of publications for the general public which contain statements by several Presidential candidates on campaign issues selected by LTV/ACC.

Since the proposed communication would, in effect, be a means of advertising each candidate's views, the costs of publishing the communication would constitute an in-kind contribution to each of the candidates. 2 U.S.C. §431(8)(A)(i). The amount of the contribution to each candidate would be equal to the cost of publishing the communication divided by the number of responses printed. 11 CFR 106.1(a).

Since the costs of publishing the information would count as in-kind contributions, the LTV Corporation may not reimburse LTV/ACC for the publication costs; nor may the LTV Corporation pay the costs itself. The Corporation's payment of these costs would violate the Act's ban on corporate contributions and expenditures in connection with federal elections. (Date Issued: January 11, 1980; Length: 4 pages)

AO 1979-72: Trade Association's Reimbursement of Separate Segregated Fund

The National Association of Home Builders (NAHB) may reimburse its separate segregated fund, the Build Political Action Committee (Build-PAC), for solicitation costs that Build-PAC had unnecessarily and mistakenly paid for in connection with a fundraiser for Build-PAC.

As required by Commission Regulations (11 CFR 114.5 (b)(2)), Build-PAC had previously reimbursed NAHB for fundraising costs which exceeded one-third of the gross revenues of the fundraiser. However, in calculating total costs, Build-PAC had mistakenly included costs for soliciting contributions. Since the Act permits a membership corporation to pay these solicitation costs for its separate segregated fund (2 U.S.C. §441(b)(4)(C)), Build-PAC did not have to include these costs in determining the required payment for costs of entertainment and prizes awarded at the event. As a result of this erroneous calculation, Build-PAC had actually overpaid NAHB. NAHB may, therefore, repay Build-PAC the overpayment ($18,906.54) resulting from the error. Commissioner Thomas E. Harris filed a dissenting opinion. Commissioner Frank P. Reiche filed a concurring opinion. (Date Issued: February 1, 1980; Length, including concurring opinion and dissent, 6 pages)

AO 1979-73: Allocation of Advance Staff Salary and Per Diem in Presidential Campaign

For purposes of complying with national and state-by-state expenditure limits, applicable to the primary election, the Kennedy for President Committee (the Committee) should allocate advance staff salary and per diem costs to the state with respect to which the staff engages in campaign activity. According to Commission Regulations, expenditures "for staff, media, printing, and other goods and services used in a specific State should be attributed to that State." 11 CFR 106.2(b). Therefore, the Committee should allocate expenditures for advance staff salaries to each state limit in proportion to the time that the advance person, working either out of national headquarters or in the field, spends in connection with the campaign in that state. The Committee should allocate per diem costs to the state where the advance person uses the per diem. Expenses for interstate travel, however, and for per diem used during such travel need not be attributed to any individual state limit. All expenditures attributed to any state must also be attributed to the overall national expenditure limit. (Date Issued: January 11, 1980; Length: 2 pages)

AO 1979-74: Payment of Compensation to Candidate

William Emerson, a candidate for the U.S. House of Representatives, may receive compensation for his legislative lobbying and consulting business without such compensation constituting contributions or expenditures, provided the compensation:

1. Results from bona fide employment, genuinely independent of his candidacy;
2. Is exclusively in consideration of his services; and
3. Does not exceed what a similarly qualified person would receive for the same work, over the same period of time. (Date Issued: January 11, 1980; Length 2 pages)

AO 1979-75: Combined Fundraising by Trade Association PAC and It's State and Local Affiliates

The Associated Builders and Contractors Political Action Committee (ABC-PAC), established by the Associated Builders and Contractors, Inc. (ABC), a trade association, may follow the procedures it proposed to the Commission for accepting and allocating contributions received through a combined federal/state fundraising effort.

State and local ABC chapters (affiliated with ABC) have established political action committees (Chapter PAC's) to support exclusively candidates for state and local office. Under the proposed procedures, a written agreement will provide that funds jointly collected by the Chapter PACs and the ABC-PAC will be divided on a 2/3-1/3 basis and that no part of the contributions received by a Chapter PAC will be used to support a federal election. All solicitation materials will inform contributors that 1/3 of their contribution will be allocated to federal elections and, thus, be charged against applicable contribution limits of the Act.

The jointly collected funds will be deposited in a special escrow account. The bank will divide the contributions according to the agreed ratio and transfer to the Chapter PAC and ABC-PAC accounts the portion due to each. ABC-PAC's Statement of Organization will identify all such special accounts as campaign depositories.

ABC-PAC will officially "receive" each contribution on the day the designated ABC-PAC state representative actually receives the funds, rather than when the funds are transferred into ABC-PAC's account. The representative will deposit all contributions into the escrow account within 10 days of receipt, and will furnish ABC-PAC headquarters with the information on contributors and contributions necessary for recordkeeping and reporting requirements. (Date Issued: January 18, 1980; Length: 4 pages)

AO 1979-76: Sale of Books to Corporations as Contributions

The RSC Campaign Fund (the Committee), a political committee, may not sell to corporations books that it published for fundraising purposes. The gross proceeds of the sale are considered contributions, whether the books are sold above, below or at cost, and the Act and Commission Regulations prohibit a corporation from making a contribution to a political committee.

The Commission distinguished this opinion from two previous opinions (AO 1979-24 and AO 1978-18) wherein the sale of excess campaign assets and contributor lists did not constitute contributions because, unlike the books published by the Committee, the items were not specifically acquired or developed for general fundraising purposes. (Date Issued: January 22, 1980; Length: 3 pages)

AO 1979-77: Activities of Affiliated Committees

Since the Trammell Crow Partners (the Crow Partnership) owns controlling stock in the Trammell Crow Company (the Crow Company), and since the partners of the Crow Partnership are also executive officers of the Crow Company, the two organizations are considered affiliated for purposes of the Act; thus, their respective political committees are affiliated committees. Accordingly, the Trammell Crow Partners Political Committee (the Partners Committee) and the Trammell Crow Company PAC (the Crow Company PAC) must make and receive contributions as though they are a single committee with a single contribution limit. Each committee, however, must file reports separately and identify the other as an affiliated committee on its Statement of Organization.

The Crow Company PAC, a separate segregated fund, may solicit contributions from the individual partners of the Crow Partnership since they own all the stock of the Crow Company, a corporation, and the Crow Company PAC is affiliated with the Partners Committee.

On the other hand, since the Partners Committee is not a separate segregated fund of a corporation, it may solicit contributions from any individual who may otherwise make lawful contributions under the Act.

The Crow Company may provide the Partners Committee with corporate employees to render legal and accounting services solely to ensure compliance with the Act. The compensated services are not considered contributions but must be reported by the Committee in accordance with Commission reporting regulations. (Date Issued: January 29, 1980; Length: 4 pages)

AO 1979-78: Definition of Honorarium

The fee paid to Senator Daniel P. Moynihan for serialization of his book in *The New Yorker*, prior to the book's publication, does not constitute an honorarium, but rather a book royalty.

Payment for an article is specifically included in the definition of honorarium in 2 U.S.C. §441i. "Article" is defined in Commission regulations to include "a writing other than a book, which has been or is intended to be published." 11 CFR 110.12(b)(4). However, since Senator Moynihan's publisher negotiated the serialization fee, received the fee from the magazine and paid the Senator his percentage of the fee, the fee represents a royalty for Senator Moynihan's book rather than a payment for an "article." (Date Issued: January 11, 1980; Length: 2 pages)

AO 1980-4: Legal Services Donated to Presidential Committee for Defense in Civil Suit

Compensation paid by several law firms to their staffs for legal services rendered without charge to the Carter/Mondale Presidential Committee (the Committee) to defend the Committee in a civil lawsuit would not be considered contributions under the Act. (The complaint alleges that the Committee improperly allocated costs between political and official travel and did not properly reimburse the government for such travel, in violation of the Hatch Act, the Appropriations Act and the plaintiff's constitutional rights.) The firms' compensation enables the Committee to present a defense to a civil complaint rather than enabling the firms' staffs to participate in the Committee's political activities. Therefore, since the donated legal services are not rendered for the purpose of influencing a federal election, they are not contributions. (Date Issued: February 1, 1980; Length: 3 pages)

INFORMATION

SPECIAL PARTY EXPENDITURE LIMITS – 1980

Under the Federal Election Campaign Act, as amended, and the FEC Regulations, there are special limits on expenditures made by political parties on behalf of candidates in the general election. 2 U.S.C. §441a(d); 11 CFR 110.7. These special party expenditures count neither as contributions to the candidate nor as expenditures by the candidate or the candidate's authorized committees. The expenditures are reported only by the party committee. The party spending limits are based on state voting age population estimates (as of July 1, 1979) published by the Department of Commerce, and the change in the Consumer Price Index certified by the Secretary of Labor.

National political party committees have separate expenditure limits for each Presidential, Senate and House candidate in the general election.

State political party committees are entitled to separate expenditure limits for each Senate and House candidate they support in the general election in their state. Within a state, all expenditures made on behalf of one candidate by the state party committee or any subordinate party committee (e.g., county, district, local) are subject to one expenditure limit. State committees do not have a separate limit for Presidential candidates.

Presidential Candidates

The national party committee's expenditure limit for Presidential candidates for the 1980 general election is $4,637,653.76. This figure is based on the following formula: U.S. voting age population x $.02, plus a 47.2 percent increase in the Consumer Price Index. The actual figure has been derived by making the following calculation: 157,529,000 x $.02 x 1.472.

Senatorial Candidates

The party's expenditure limit for Senate candidates is the greater of either:

- State voting age population (VAP) x $.02, plus a 47.2 percent increase in the consumer price index (VAP x $.02 x 1.472); or
- $29,440. See chart below.

House Candidates

The limit for House candidates is either:

- $14,720 for House candidates in states with more than one district (and candidates for Delegate from the District of Columbia, Guam and the Virgin Islands; or for Resident Commissioner from Puerto Rico); or
- The same as the Senate limit for the state, for House candidates in states with only one Congressional district. (See states marked with asterisk on chart below.)

PARTY SPENDING LIMITS FOR CONGRESSIONAL CANDIDATES

The Commission has compiled the following chart for 1980 limits on special party expenditures for Senate candidates in the general election.

An asterisk (*) indicates those states in which there is only one Congressional district. In these states, the Senate limit also applies to party spending on behalf of candidates for the House of Representatives. For all other states, the party expenditure limit for House candidates is $14,720.

State	VAP (in thousands)	1980 Party Spending Limitations
Alabama	2,644	$77,839.36
Alaska*	261	29,440.00
Arizona	1,697	49,959.68
Arkansas	1,542	45,396.48
California	16,475	485,024.00
Colorado	1,972	58,055.68
Connecticut	2,295	67,564.80
Delaware*	417	29,440.00
Florida	6,633	195,275.52
Georgia	3,561	104,835.84
Hawaii	640	29,440.00
Idaho	612	29,440.00
Illinois	7,997	235,431.68
Indiana	3,807	112,078.08
Iowa	2,080	61,235.20
Kansas	1,724	50,754.56
Kentucky	2,485	73,158.40
Louisiana	2,723	80,165.12
Maine	779	29,440.00
Maryland	3,000	88,320.00
Massachusetts	4,253	125,208.32
Michigan	6,470	190,476.80
Minnesota	2,892	85,140.48
Mississippi	1,624	47,810.56
Missouri	3,524	103,746.56
Montana	551	29,440.00
Nebraska	1,125	33,120.00
Nevada*	495	29,440.00
New Hampshire	634	29,440.00
New Jersey	5,332	156,974.08
New Mexico	836	29,440.00
New York	12,898	379,717.12
North Carolina	3,992	117,524.48
North Dakota*	462	29,440.00
Ohio	7,645	225,068.80
Oklahoma	2,076	61,117.44
Oregon	1,828	53,816.32
Pennsylvania	8,620	253,772.80
Rhode Island	683	29,440.00
South Carolina	2,026	59,645.44
South Dakota	484	29,440.00
Tennessee	3,134	92,264.96
Texas	9,291	273,527.04
Utah	862	29,440.00
Vermont*	350	29,440.00
Virginia	3,758	110,635.52
Washington	2,829	83,285.76
West Virginia	1,339	39,420.16
Wisconsin	3,372	99,271.68
Wyoming*	312	29,440.00
District of Columbia		14,720.00
Guam		14,720.00
Puerto Rico		14,720.00
Virgin Islands		14,720.00

PUBLIC FINANCING

FEC CERTIFIES ELIGIBILITY OF SIX MORE CANDIDATES FOR 1980 MATCHING FUNDS

On the dates indicated below, the Commission certified to the U.S. Treasury that the following candidates were eligible to receive primary matching funds for the 1980 Presidential primary election:

George Bush	January 3, 1980
Ronald Reagan	January 15, 1980
Robert Dole	January 15, 1980
Philip Crane	January 21, 1980
Edmund G. Brown	January 22, 1980
John Anderson	February 5, 1980

The recent certifications bring the number of candidates certified to receive matching funds to ten. The Commission had previously certified Howard Baker, President Jimmy Carter, Lyndon LaRouche and Edward Kennedy.

FEC PUBLIC APPEARANCES

To provide information on campaign finance laws and the FEC, the Commission regularly accepts invitations to address public gatherings. This regular column lists upcoming scheduled Commission appearances, the name of the sponsoring organization, the location of the event and the name of the Commission's speaker. For additional information on any appearance, please contact the **sponsoring organization**:

3/9 B'nai B'rith
Falls Church, Virginia
Rob Snow

CLEARINGHOUSE

SUBSCRIPTIONS TO ELECTION LAW UPDATES AND ELECTION CASE LAW SERIES

The Commission announces the availability of annual subscriptions to its quarterly *Election Law Updates* and *Election Case Law* series. These quarterly reports have become one of the accepted sources of information on federal and state election laws and case decisions. The quarterly, cumulative format provides up-to-date information on key elections developments at the federal and state level, and each series is published in cooperation with the American Law Division of the Library of Congress.

The *Election Law Updates* series includes a synopsis of all key federal and state election laws and has a comprehensive index to aid in research. At the end of each year, an Annual Cumulative Summary is published, which summarizes the entire year's election law activities. The subscription price for this series is $11.00 a year and includes three quarterly, cumulative issues plus the Annual Cumulative Summary.

The *Election Case Law* series is similar in design and concept except that all federal and state election cases are summarized and indexed. The subscription price for this series is $10.00 a year and also includes three quarterly cumulative issues plus the Annual Cumulative Summary.

For further subscription information, please call or write: Clearinghouse – FEC, 1325 K Street, N.W., Washington, D.C. 20463, telephone, 202/523-4183 locally or call toll-free, 800/424-9530.

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April 1980

REPORTS

NEW REPORTING PROCEDURES AND FORMS FOR APRIL REPORTS

Political committees listed below are now required to file quarterly reports with the Federal Election Commission by **April 15** or monthly reports by **April 20**. Political committees must report their campaign finance activity in accordance with the new disclosure provisions contained in the 1979 Amendments to the Federal Election Campaign Act (Pub. L. 96-187). The Commission has revised its regulations (11 CFR Part 104) and issued new forms to carry out the 1979 Amendments.

Who Reports in April

The thresholds which trigger registration and reporting requirements for political committees have been modified by the 1979 Amendments as follows:

Authorized candidate committees (including principal campaign committees) register and report when both the committees and the candidate they support have together received contributions in excess of $5,000 **or** made expenditures and/or incurred debts in excess of $5,000.

Local party organizations register as political committees and report when they have **either**:

1. received contributions in excess of $5,000 a year;
2. spent more than $5,000 a year for certain payments that are exempted from the definition of contribution or expenditure. See 2 U.S.C. §431B(8)(v), (x) and (xii);
3. made expenditures exceeding $1,000 a year; or
4. made contributions exceeding $1,000 a year.

Separate segregated funds (political action committees or PACs) must register and report **regardless** of the amount of their financial activity.

All other political committees must register and report when they have received contributions in excess of $1,000 **or** made expenditures and incurred debts in excess of $1,000 per calendar year.

Who Need Not Report

Under the 1979 Amendments, the following persons are **not** required to file a quarterly or monthly report in April 1980:

Candidates. Instead, as an agent of the campaign, the candidate must report to the principal campaign committee any personal financial activity related to the campaign.

Committees authorized by individuals who are not candidates under the Act, i.e., committees which have not received contributions aggregating in excess of $5,000 or made expenditures and incurred debts in excess of $5,000, even though they may have already registered under the Act.

Committees that exclusively support candidates not seeking election in 1980 (e.g., candidates seeking a U.S. Senate seat in 1982). Instead, these political committees are required to file semiannual reports in July 1980 and January 1981. (Quarterly reports are required only during an election year.)

When Reports Are Filed

Monthly Reports. The treasurer of each principal campaign committee of a Presidential candidate which has received contributions or made expenditures aggregating $100,000, or anticipates doing so, must file a monthly report by April 20. In addition, all committees **not** authorized by a candidate, which file on a monthly basis, must file their monthly report by April 20. The monthly report must cover all transactions that occurred from March 1 through March 31, 1980. Note that, if a Presidential committee that has been filing on a quarterly basis receives contributions or makes expenditures aggregating in excess of $100,000, that committee must begin to file monthly reports in the next reporting period.

Quarterly Reports. The treasurer of any other political committee required to report in April (see above) must file a quarterly report by April 15 **regardless of the amount of funds received or expended by the committee** during the quarter. (FEC Form 3a (postcard waiver) is no longer an acceptable filing.) The quarterly report must include all reportable transactions occurring since the last full report

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filed (or, if the committee is new, from the date of registration) through March 31, 1980.

Where Reports Are Filed

Statements and Reports Filed with the Federal Government. Political committees must file their reports with the Clerk of the House, the Secretary of the Senate or the Federal Election Commission, as appropriate. 11 CFR Part 105.

NOTE: Each authorized committee of a candidate must file its report with the principal campaign committee, which in turn must file a consolidated report on FEC Form 3Z with the appropriate offices.

Statements and Reports Filed with State Officers. Principal campaign committees of Presidential and Vice Presidential candidates must file a report with the appropriate officials in each state in which an expenditure is made on behalf of the candidate during the reporting period covered. 11 CFR 108.2. All unauthorized committees must file a copy of each report and statement related to Presidential and Vice Presidential campaigns with the appropriate state officers of both the state in which the expenditure is made and the state in which the unauthorized committee is headquartered. 11 CFR 108.2.

A copy of reports and statements related to candidates for the Senate and the House must be filed with the appropriate official in the state in which the candidate seeks election. Political committees, other than authorized committees, need file only that portion of their report applicable to a candidate seeking election in the particular state. 2 U.S.C. §439(a)(2)(B).

Content

The 1979 Amendments to the Act modify the content of reports by redefining and reordering reporting categories under which receipts and disbursements must be reported. Consult the new FEC forms for detailed instructions on how to fill out the report.

New Forms

Political committees must use the following forms, with appropriate schedules, to file their quarterly or monthly reports:

1. *Form 3X* must be used by all political committees which are not authorized by a candidate.
2. *Form 3* must be used by all political committees authorized by a candidate for the House or Senate.
3. *Form 3P* must be used by Presidential campaigns.

A notice containing additional information, as well as forms, has been sent to all registered committees. Questions about the notice, or requests for forms, should be addressed to the Office of Public Communications, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463; or telephone 202/523-4068, toll-free 800/424-9530.

SPECIAL ELECTION IN LOUISIANA

Louisiana has scheduled a special primary election for April 19 to fill the seat vacated by Governor David C. Treen, former Representative from the Third Congressional District. A special general election will be held on May 17 **only** if one of the candidates running in the special primary election does not achieve a majority of the votes in the primary. (Under Louisiana's open primary law, all Republican and Democratic candidates appear on the same primary ballot. In the event no candidate achieves a majority of votes in the primary election, the top two vote-getters go on to the special general election regardless of party affiliation.)

The principal campaign committees of all candidates involved in the primary election will receive a special notice from the FEC on their reporting requirements and filing dates. All other committees supporting candidates in the special election in Louisiana should contact the Commission for information on required reports. Information may be obtained by calling toll free (800)424-9530 or 523-4068 in Washington, D.C.

REGULATIONS

COMMISSION PROPOSES REGULATIONS TO IMPLEMENT 1979 AMENDMENTS TO ACT

On February 28, 1980, the Federal Election Commission sent to Congress a new set of proposed regulations revising 11 CFR, Parts 100-106, 108-114, and 9008, which implement the 1979 Amendments to the Federal Election Campaign Act (the Act) (Pub. L. No. 96-187). Under a special provision for expediting this set of regulations, the Commission may prescribe these regulations 15 legislative days after it has sent them to Congress, unless the House of Representatives or the Senate disapproves them. (Normally, the Congressional review period is 30 legislative days. 2 U.S.C. §438(d)(2).)

The proposed regulations modify only those parts of the regulations that were affected by the 1979 Amendments. Regulations on reporting requirements (Part 104), for example, have been changed substantially, but the regulations on separate segregated funds (Part 114) have been modified only slightly. The following chart indicates which parts and sections of the regulations have been affected by being rewritten, renumbered or deleted. All citations refer to regulations prescribed by the Commission on **April 13, 1977**, to implement the 1976 amendments to the Act.

The RECORD *is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Robert O. Tiernan, Chairman; Max L. Friedersdorf, Vice Chairman; Joan D. Aikens; Thomas E. Harris; John W. McGarry; Frank P. Reiche; J.S. Kimmitt, Secretary of the Senate, Ex Officio; Edmund L. Henshaw, Jr., Clerk of the House of Representatives, Ex Officio. For more information, call 202/523-4068 or toll free 800/424-9530.*

Part	No Change	Rewritten	Renumbered	Deleted
100		•	•	
101		•	•	
102		•	•	
103		•		
104		•	•	
105		•	§105.4	
106	• (except minor revisions)	§106.1(c)(3) §106.2(a) §106.3(d)		
107*		•		
108	§108.7 §108.8	§§108.1-108.6		
109	§109.1	§109.2 §109.4	§109.4	§109.3 §109.5
110	§110.1 §§110.3-110.5 §§110.8-110.10	§110.2(b) §110.6(c)(4) §110.6(c)(4)(i) §110.11(a) §110.12(a) §110.12(b)(5) & (6)	§110.7(c)(3)	§110.7(b)(5) §110.7(c)(2) §110.11(c)
111		•	•	
112		•	•	
113	§113.1	§113.2(c) & (d) §113.3(b) §113.5(b)	§113.5	§113.4
114	• (except minor revisions)	§114.1(a)(2)(v) §114.6(c)(3) §114.6(d) §114.6(d)(2)(ii) §114.6(d)(3)(i) & (ii)		
9008	• (except minor revisions)	§9008.3(a)		

The proposed regulations were published in the *Federal Register* on March 7, 1980 (45 FR 15080-15126). The notice includes a subject index to 11 CFR, Parts 100-115. This index covers both the proposed regulations that implement the 1979 Amendments to the Act and those sections and parts of the regulations that were not affected by the Amendments (and thus were not changed by the newly proposed regulations).

OPINIONS

ADVISORY OPINION REQUESTS

Advisory Opinion Requests (AOR's) pose questions on the application of the Act or Commission Regulations to specific factual situations described in the AOR. The following chart lists recent AOR's with a brief description of the subject matter, the date the requests were made public and the number of pages of each request. The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject	Date Made Public	No. of Pages
1980-13	Payment of college tuition and salary when professor is federal candidate.	2/13/80	3
1980-14	Use of campaign materials from 1972 campaign in 1980 campaign.	2/22/80	1
1980-15	Nonpartisan voter registration and get-out-the-vote public service announcements by corporation.	2/22/80	2
1980-16	Transportation cost to charity fundraising golf tournament paid by corporations.	2/27/80	2
1980-17	Fundraising agent of political committee paid on commission basis.	2/27/80	2
1980-18	Establishment and administrative costs of separate segregated fund established by four affiliated corporations.	2/27/80	11
1980-19	Purchase by labor organization of a poll conducted under contract between a Congressional campaign committee and a polling firm.	2/28/80	1
1980-20	Corporate payment of advertisement urging voter registration in a general circulation newspaper.	3/3/80	7
1980-21	Donation of baseball tickets to host committee of national party convention.	3/4/80	2
1980-22	Corporate sponsorship of town meetings.	3/4/80	2
1980-23	Name of separate segregated fund.	3/10/80	2

continued

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*Previous change. Amended Section 107 was prescribed by the Commission on December 20, 1979, and published in the *Federal Register* on November 1, 1979 (44 FR 63045).

ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR. Under the 1979 amendments to the Act, any person may request an AO on a specific activity which the person intends to undertake. The requester will not be subject to any sanctions under the Act if he/she acts in accordance with the opinion. Other persons may rely on the opinion if they are involved in a specific activity which is indistinguishable in all material aspects from the activity discussed in the AO. Those seeking guidance for their own activity, however, should consult the full text of an AO and not rely only on the summary given here.

AO 1979-58: Volunteer Services Provided by Senior Partner of Law Firm

The senior partner of a law firm may engage in volunteer fundraising and political activities for the Carter/Mondale Presidential Committee, Inc. (the Committee) without such activities counting as in-kind contributions from the firm to the Committee. 2 U.S.C. §431(8)(A).

Although the senior partner would be providing services to the Committee during the law firm's normal business hours, his income from the firm would not be considered compensation for such services because: 1) the partner's income is not based on time devoted to firm business but rather on "his proprietary or ownership interest in the firm"; and 2) the partner has complete discretion in the use of his time, and no reduction of income to the firm would occur if, for whatever reason, he spent fewer hours at the firm. Commissioner Frank P. Reiche filed a dissenting opinion. (Date Issued: March 5, 1980; Length: 6 pages)

AO 1979-62: Solicitations by Trade Association PAC

The Tooling and Machining PAC, the separate segregated fund of the National Tool, Die and Precision Machining Association (NTDPMA), a trade association, may not solicit the executive or administrative personnel of corporations which are members of the Chicago Tool and Die Institute (CTDI) but are not members of NTDPMA. Although CTDI and NTDPMA have similar goals, interests and membership requirements, not all the member corporations of CTDI are members of NTDPMA. The Tooling and Machining PAC would, therefore, be specifically precluded from soliciting those corporations that are not members of NTDPMA. (Date Issued: February 14, 1980; Length: 3 pages)

AO 1979-80: Independent Expenditures Program of a Multicandidate Political Committee

Use of consultants or vendors by the National Conservative Political Action Committee (NCPAC), a multicandidate political committee, to make independent expenditures may result in an in-kind contribution to a candidate for federal office under certain circumstances.

Before undertaking an independent expenditure program advocating the defeat of certain candidates for federal office, NCPAC sought guidance from the Commission in determining whether NCPAC would be prohibited from engaging a particular consultant or vendor, in connection with making independent expenditures advocating the defeat of a clearly identified candidate, if that consultant or vendor had also been separately engaged by an opponent of that candidate or by a potential opponent of that candidate.

The Act and Commission regulations state the conditions which must be met in order for an expenditure to be independent. Specifically, "independent expenditure means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate which is not *made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate.*" (Italics added.)

The questions posed by NCPAC suggested that NCPAC was concerned with the last element (italicized) in the definition of an independent expenditure. Commission regulations specifically define this element of an independent expenditure as an expenditure which is **not** arranged, coordinated or directed "by the candidate or his/her agent prior to the publication, distribution, display or broadcast of the communication." 11 CFR 109.1(b)(4). Further, the regulations state that such cooperation or coordination in making the expenditure would be presumed to exist if:

1. The expenditure is "based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate," or
2. The expenditure is "made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of an authorized committee, or who is, or has been receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent." 11 CFR 109.1(b)(4)(i).

Therefore, if NCPAC engages the services of a vendor or consultant to make independent expenditures advocating the defeat of a certain candidate, the presumption is that the expenditures would **not** be independent and would result in an in-kind contribution to the candidate's opponent if:

1. An agency relationship exists or existed between the candidate's opponent and a vendor or consultant engaged by NCPAC; or
2. The expenditure is based on information provided by the opponent or the opponent's agent; or
3. The expenditure is made by or through any person connected with the opponent's campaign, as specified by 11 CFR 109.1(b)(4)(i)(B). (See above.)

The Commission then applied these three criteria for an independent expenditure program to nine specific situations presented by NCPAC. (Date Issued: March 12, 1980; Length: 10 pages)

AO 1979-81: Free Use of Community Facility for Fundraising Event

Free use of the Kansas City Armory for a fundraising event by the Winn for Congress Committee (the Winn Committee) would not constitute an in-kind contribution to the Winn Committee by the State of Kansas (owners of the Armory), by the Citizen's Military Committee (managers of the Armory) or by the Wyandotte County Republican

Committee (the group that transferred to the Winn Committee their right to use the Armory free of charge once a year) provided the conditions below are met.

Under the Act as amended in 1979, the term "contribution" excludes, under certain circumstances, "the use of real or personal property, including a church or community room." 2 U.S.C. §431(8)(b)(ii). In this case, the use of the Armory free of charge would not be considered an in-kind contribution to the Winn Committee as long as the Armory:
- is commonly offered and used on a regular basis by members of the Kansas City community for noncommercial and community purposes; and
- is available for use without regard to political affiliation.

There would be no reporting requirement if the use is not a contribution under these conditions. (Date Issued: February 13, 1980; Length: 2 pages)

AO 1979-82: Use of Excess Campaign Funds

Congressman Ronald M. Mottl (D-Ohio) may transfer excess campaign funds to his son's campaign for state office as long as the transfer of funds is lawful under Ohio law. Under the 1979 Amendments to the Act, candidates who were not members of Congress on the day the 1979 Amendments were enacted into law (January 8, 1980) may not use excess campaign funds for personal use. Since, however, Congressman Mottl was a Member of the U.S. House on that date, the question does not arise as to whether a transfer to his son's state campaign would be considered using the funds for "personal use." 2 U.S.C. §439a.

Further, the Act does limit the amount of funds which may be transferred by Congressman Mottl's principal campaign committee to candidates for state or local office. 2 U.S.C. §441a. (Date Issued: February 8, 1980; Length: 2 pages)

AO 1980-1: Solicitation of Insurance Agents by Corporation PAC

The Farmer's Mutual Hail Political Action Committee (FMH-PAC), the separate segregated fund of the Farmers Mutual Hail Insurance of Iowa (the Company), may not solicit contributions from the commissioned insurance agents who represent the Company.

The commissioned agents may not be considered "executive or administrative personnel" because the Company does **not** withhold income tax from the agents' salaries. 11 CFR 114.1(c). Since corporations may solicit only their executive and administrative personnel and stockholders, FMH-PAC may not solicit these agents for contributions. (Date Issued: February 15, 1980; Length: 2 pages)

AO 1980-3: Qualifying as the National Committee of a Political Party

Documentation provided to the Commission demonstrates that the Executive Committee of the Citizens Party is engaged in sufficient party-building activity on the national level to qualify as the "national committee" of the Citizens Party, once the Citizens Party qualifies as a "political party" under the Act and Commission Regulations. To qualify as a political party, the Citizens Party must obtain verification from a state election official that a federal candidate's name will appear on that state's election ballot as a Citizens Party candidate. 2 U.S.C. §431(16). At that time, assuming the Executive Committee continues its party-building activities, it would qualify as the national committee of a political party.

Determination of national committee status would permit the Citizens Party to accept contributions subject to the annual limit ($20,000 or $15,000) of 2 U.S.C. §441a(a) and to make limited national party expenditures as provided by 2 U.S.C. §441a(d). The Commission did not express an opinion, however, on the applicability of public funding provisions of the Act to possible activities by the Citizens Party and its potential Presidential candidate since the Executive Committee did not present any specific transaction or activity related to these provisions of the Act. (Date Issued: March 4, 1980; Length: 3 pages)

AO 1980-7: Political Contributions by State-Chartered Corporation

The Central Capital Corporation (Central Capital), a wholly owned subsidiary of Central Savings and Loan Association (Central Federal), may make contributions to candidates for state and local office as permitted by California law.

Central Federal is a federally chartered corporation; its subsidiary Central Capital is a state-chartered corporation. Although the Act prohibits a federally chartered corporation from making contributions or expenditures in connection with any election for any political office (2 U.S.C. §441b), that prohibition does not extend to a state-chartered subsidiary provided that it is a distinct legal entity from its parent corporation. In this case, as long as there are no circumstances to suggest Central Capital and Central Federal are one entity, Central Capital is not subject to the Sec. 441b prohibition on contributions by federally chartered corporations. (Date Issued: March 4, 1980; Length: 2 pages)

CLEARINGHOUSE

SUBSCRIPTIONS TO ELECTION LAW UPDATES AND ELECTION CASE LAW SERIES

The following subscriptions are available from the FEC's Clearinghouse:
- *Election Law Updates.* This quarterly series includes a synopsis of all key federal and state election laws, a comprehensive index to aid in research and an annual cumulative summary. Subscription price: $11.00 a year.
- *Election Case Law.* This quarterly series is similiar in design and concept to the *Election Law Updates.* All federal and state election cases are summarized and indexed. Subscription price: $10.00 a year.

Please do **not** send checks or money orders to the Commission. For information on how to subscribe, please write: Clearinghouse — FEC, 1325 K Street, N.W., Washington, D.C. 20463; or call 202/523-4183 locally or toll-free 800/424-9530.

FEC PUBLIC APPEARANCES

In keeping with its objective of making information available to the public, the Federal Election Commission regularly accepts invitations to address public gatherings on the subject of campaign finance laws and the Commission itself. This regular column lists scheduled Commission appearances, detailing the name of the sponsoring organization, the location of the event and the name of the Commission's speaker. For additional information on any scheduled appearance, please contact the **sponsoring organization.**

4/3	Southern Methodist University Edwin Cox School of Business The Corporation and Practical Politics Dallas, Texas Commissioner Joan Aikens
4/10-11	Amer. Law Institute/Amer. Bar Association Legal Aspects of Political Campaigns Arlington, Virginia Chairman Robert Tiernan Louise Wides, Dep. Asst. Staff Director for Information Services
4/11-12	Syracuse University Seminar on Public Regulation of Politics Syracuse, New York Bill Loughrey, Deputy Staff Director
4/18	Hamline University School of Law Advanced Legal Education Seminar St. Paul, Minnesota N. Bradley Litchfield, Assistant General Counsel for Policy
4/22	Tulsa County Bar Association Corporate Counsel Section Tulsa, Oklahoma Commissioner Joan Aikens

COMPLIANCE

COMMISSION ADOPTS INTERIM ENFORCEMENT PROCEDURES

On February 29, 1980, the Commission sent Congress amended regulations, including new enforcement provisions, which conform to the 1979 Amendments to the Act. Until the regulations are prescribed by the Commission (see article above, p. 2), the Commission will follow the interim enforcement procedures adopted on February 7, 1980, which are detailed below. These procedures closely follow the language of the statute and are embodied in the newly proposed regulations.

Complaint and Respondent's Right to Respond

Complaints filed with the Commission will be referred to the Office of General Counsel where they will be given a MUR (matter under review) number. Within five days of receiving a complaint, the Commission will notify the respondent(s) in writing that the complaint has been filed and enclose a copy of the complaint. The respondent(s) will then have 15 days to demonstrate, in writing, that no action should be taken against him/her. The complainant will also be notified at this time that the Commission has received the complaint.

Preliminary Analysis and Recommendation by OGC

At the end of 15 days (plus five days allowed for mailing), the Office of General Counsel will prepare a report for the Commissioners, based on a preliminary legal and factual analysis of the complaint and any submission made by the respondent(s). A copy of the respondent's submission will be attached to the Office of General Counsel's report. This initial report may recommend that the Commission:

1. Find "reason to believe" the complaint sets forth a possible violation of the Act and that the Commission conduct an investigation of the matter;
2. find "no reason to believe" the Act has been violated and take no further action on the matter; or
3. take no action.

"Reason to Believe" Finding and Investigation

If, by an affirmative vote of four Commissioners, the Commission decides that there is "reason to believe" a violation of the Act has occurred, the Office of General Counsel will open an investigation into the matter. During the investigation, the Commission may subpoena documents, subpoena individuals to appear for deposition and order answers to interrogatories.

Informal Conciliation Agreement

If, during the period of investigation, the respondent(s) indicate a desire to enter into conciliation, the Office of General Counsel staff may begin an informal conciliation process. Any agreement must be adopted by an affirmative vote of four Commissioners before it becomes final. After it has been signed by the General Counsel and the respondent(s), the Commission will make the conciliation agreement public and the case will be closed.

"Probable Cause to Believe" Finding and Respondent's Right to Respond

If the investigation warrants further action, the Office of General Counsel must notify the respondent(s) of its intent to recommend that the Commission vote on whether there is "probable cause to believe" the Act has been violated. The notification must include a brief which details the position of the General Counsel on the legal and factual issues of the case. Within 15 days of receiving the brief, the respondent(s) may reply to the brief, presenting his/her position. The Commission must consider both briefs before taking further action.

Formal Conciliation Agreement

If the Commission then determines by an affirmative vote of four Commissioners that there is "probable cause to believe" the Act has been violated, formal conciliation must be undertaken for at least 30 days, but no longer than 90 days. If formal conciliation fails, the Office of General Counsel may recommend that the Commission file a civil suit against the respondent(s) to enforce the Act. If, on the other hand, an agreement is reached, it will be made public by the Commission.

THE LAW IN THE COURTS

APPEALS COURT ORDERS DISMISSAL OF CLITRIM SUIT

On February 2, 1980, the U.S. Court of Appeals for the Second Circuit remanded *FEC* v. *Central Long Island Tax Reform Immediately, et al.* to the District Court for the Eastern District of New York with an order to dismiss the suit.

The Federal Election Commission (FEC) originally filed the suit on August 1, 1978, alleging that violations of the Act occurred when the Central Long Island Tax Reform Immediately Committee (CLITRIM) published a pamphlet for general circulation in October 1976 at a cost of more than $100. The FEC claimed that, in publishing and distributing the pamphlet, defendants violated the following provisions of the Act:

- 2 U.S.C. §434(e), which requires any "person . . . who makes . . . independent expenditures expressly advocating the election or defeat of a clearly identified candidate" in an amount exceeding $100 in any calendar year to report such costs to the FEC; and
- 2 U.S.C. §441d, which requires any person who "makes an expenditure for the purpose of financing a communication expressly advocating the election or defeat of a clearly identified candidate" to state in the communication whether it is authorized by a candidate, his authorized political committees or their agents or any other unauthorized person.

In its motion to dismiss the case, CLITRIM argued that, in its *Buckley* v. *Valeo* decision, the Supreme Court had specifically mandated that the Act be amended to regulate only expenditures or communications by persons "expressly advocating the election or defeat of a clearly identified candidate" (*Buckley* v. *Valeo*, 424 U.S. 1 (1976) at 43). Further, "express advocacy" must include at least one of the phrases suggested by the Court in *Buckley* v. *Valeo*: " 'vote for', 'elect', 'support', 'cast your ballot for', 'Smith for Congress', 'Vote Against', 'defeat', 'reject'." (424 U.S. 1 (1976) at 52.) CLITRIM pointed out that the *TRIM Bulletin* did not contain any of the terms of "express advocacy" spelled out in *Buckley* v. *Valeo*.

Responding to this argument in one of its reply briefs filed with the Court of Appeals, the FEC maintained that the CLITRIM/National Trim bulletin was not merely an informational or educational compilation of Congressional voting records. The bulletin discussed TRIM's position on the issue of high taxes and big government, identified federal candidates, critiqued their position on the issue of high taxes and big government and urged the voter to vote with TRIM. The Commission interpreted these communications as "express advocacy" communications within the meaning of 2 U.S.C. §434(e) and as construed by the Supreme Court in *Buckley* v. *Valeo* (424 U.S. 1 (1976) at 44 N. 52).

In reaching its decision to dismiss the case, the Court of Appeals concluded that the *CLITRIM Bulletin* did not "expressly advocate" the election or defeat of a candidate within the meaning of 2 U.S.C. §§434(e) and 441d. Since, as interpreted by the Court, these provisions of the Act did not apply to defendants' conduct, the Court concluded the constitutional issues raised by defendants in the case would not present a case ripe for consideration by the Court.

On February 25, 1980, National TRIM and John W. Robbins, intervenor in the case, petitioned the Court of Appeals for a rehearing. Defendants sought injunctive relief from FEC enforcement proceedings brought against local TRIM committees which were not affected by the Court's February 2 order to dismiss the case. On March 5, 1980, the petition for rehearing was denied by the Court of Appeals.

SUPREME COURT DENIES HEARING TO THREE SUITS

On February 19, 1980, the Supreme Court denied a petition for *certiorari* in three cases brought by Lyndon H. La Rouche, et al. and Leroy B. Jones, et al. The Federal Election Commission, as respondent in the suits, had filed a brief opposing the petition. Plaintiffs' petition sought review by the Court of decisions of the U.S. Court of Appeals for the District of Columbia in the following cases:

In *Committee To Elect Lyndon La Rouche* v. *FEC*, the Court of Appeals had upheld the Commission's action in denying primary matching fund payments to Lyndon La Rouche, candidate of the U.S. Labor Party, during the 1976 Presidential primary campaign.

In *FEC* v. *Committee to Elect Lyndon La Rouche, et al.* the Court of Appeals had upheld three actions of the U.S. District Court for the District of Columbia in a suit which had been filed on September 28, 1977, by the Committee to Elect Lyndon La Rouche, the National Caucus of Labor

continued

Committees, the New Solidarity International Press Service, Inc., and Campaigner Publications, Inc. In upholding the District Court's action, the Court of Appeals held that:

1. The District Court had jurisdiction to determine this case despite appellants' argument that the District of Columbia was not the place where the Commission's inquiry took place;
2. The District Court had personal jurisdiction over the appellants despite the fact that they were served in New York rather than in the District of Columbia; and
3. The District Court had not denied the appellants an opportunity to demonstrate that the Commission had issued the subpoenas in retaliation for two suits which the appellants had brought against the Commission.

In *LeRoy B. Jones, et al.* v. *FEC*, the plaintiffs had challenged the Commission's field interviews of La Rouche contributors, the manner in which the interviews were conducted and the scope of the questions asked on constitutional and statutory grounds. The District Court had granted summary judgment to the FEC. The Court of Appeals had upheld the District Court's action with respect to all but two of the allegations made by plaintiffs.

The three suits are summarized in detail in the October 1979 issue of the FEC *Record*, available on request in the Commission's Public Records Office.

LITIGATION STATUS INFORMATION

The following is a list of new litigation involving the Commission, together with the date the suit was filed, the court involved, the docket number and a brief description of the major issue(s) involved in the case. Persons seeking additional information on a particular case should contact the court where the suit is filed or the Commission.

FEC v. *Jeffrey Bell*, U.S. District Court for the District of New Jersey, Docket No. 80-174, January 21, 1980.

FEC alleges that Jeffrey Bell, a candidate for the U.S. Senate from New Jersey in 1978, violated 2 U.S.C. §441a(f) by accepting excessive contributions from his mother.

International Association of Machinists v. *FEC*, U.S. District Court for the District of Columbia, Docket No. 80-0354, February 4, 1980.

Plaintiffs seek declaratory relief pursuant to 2 U.S.C. §437g(a)(8), alleging that the FEC acted contrary to law in dismissing an administrative complaint filed by plaintiffs. If the Court does not take this action, plaintiffs seek certification of the following constitutional issues to an *en banc* court of appeals, pursuant to 2 U.S.C. §437h(a):

1. Whether first Amendment rights of unprotected career employees are violated by provisions of the Act authorizing corporations to solicit campaign contributions from them;
2. Whether First and Fifth Amendment rights of unions and their members are violated, and unions are discriminated against, by the Act's ban on corporate and union political contributions (2 U.S.C. §441b(a)); and
3. Whether First Amendment rights of corporate stockholders are violated by 2 U.S.C. §441b(b)(2)(C), which authorizes use of corporate assets for the costs of raising political contributions.

FEDERAL REGISTER NOTICES

The list below identifies all FEC documents which appeared in the *Federal Register* between January 7, 1980, and March 10, 1980. Copies of these notices are **not** available from the FEC.

Notice	Title	Federal Register Publication Date	Citation
1980-1	Notice of Designation of Official to Receive Presidential Primary Candidate Certification of Inactive Status.	1/22/80	45 FR 4999
1980-2	Draft Regulations to Implement 1979 Amendments to the Federal Election Campaign Act (published for comment).	1/23/80	45 FR 5546
1980-3	Notice to Committees Filing Year-End Reports.	1/28/80	45 FR 6475
1980-4	Presidential Election Campaign Fund; Presidential Primary Matching Fund. (FEC prescribes proposed Regulations.)	2/12/80	45 FR 9559
1980-5	Filing Date for Pennsylvania Special General Election	2/28/80	45 FR 13411
1980-6	Contributions to and Expenditures by Delegates to National Nominating Conventions. (Draft regulations published for comment.)	3/3/80	45 FR 13766
1980-7	Opinion and Regulation Index Supplements	3/3/80	45 FR 13816
1980-8	Amendments to Federal Election Campaign Act of 1971; Regulations Transmitted to Congress	3/7/80	45 FR 15080

PUBLIC FINANCING

MATCHING FUNDS CERTIFIED TO '76 CARTER CAMPAIGN

On February 21, 1980, the Commission approved a matching fund certification of $88,293.92 to the Committee for Jimmy Carter (the Committee). The payment will be used by the Committee to liquidate net outstanding campaign obligations of $116,616.52 remaining from the Committee's campaign activities in the 1976 Presidential primaries. In calculating total payments it would certify to the Committee, the Commission deducted the following funds from the Committee's net outstanding campaign obligations:

- $19,500, an amount equivalent to funds transferred by the Committee in 1978 and 1979 to the 1976 Democratic Presidential Campaign Committee, Inc. (the principal campaign committee for Carter's general election campaign);
- $2,950 in civil penalties paid by the Committee to the U.S. Treasury in 1978; and
- $5,872.60 repaid by the Committee to the U.S. Treasury in 1978 for insufficiently documented – and therefore nonqualified – campaign expenses.

FEC CERTIFIES FUNDS FOR TEN CANDIDATES

By February 27, 1980, the FEC had certified a total of $12,725,834.18 in federal funds to ten Presidential candidates eligible to receive matching payments for the 1980 Presidential primary election. The chart below lists the cumulative amount of certified funds which each candidate had received as of February 27, 1980:

Candidate	Cumulative Certifications
John B. Anderson	$ 447,008.13
Howard H. Baker, Jr.	1,555,092.45
Edmund G. Brown, Jr.	607,189.14
George Bush, Jr.	1,318,394.47
Jimmy E. Carter	2,310,018.88
Philip M. Crane	1,090,447.90
Robert Dole	368,199.98
Edward M. Kennedy	1,553,365.15
Lyndon H. LaRouche	354,766.59
Ronald Reagan	3,121,351.49

To be eligible to receive federal matching funds, a candidate must first raise $100,000 in amounts of $5,000 or more from each of 20 states, contributed by individuals in amounts of no more than $250. While individuals may contribute up to $1,000 to a candidate, only the first $250 is matchable. Candidates must also agree to abide by spending limits, keep detailed records and submit those records for audit. Candidates may submit requests for funds on the first, third and fifth Monday of each month. The Commission certifies a percentage of the amount requested within one week of receiving the request.

In addition, the Democratic and Republican National Committees have each received a maximum entitlement of $4,416,000 to finance their respective 1980 Presidential nominating conventions.

AUDITS

AUDITS RELEASED TO THE PUBLIC

The Federal Election Campaign Act, as amended (the Act) requires candidates and political committees to file financial disclosure reports with the Commission. The Act also gives the Commission authority to audit campaigns of all Presidential candidates who receive public funds, and the reports of other political committees. Final audit reports are available to the press through the Press Office and to the general public through the Office of Public Records. The following is a chronological listing of audits released between January 7, 1980, and March 10, 1980:

Audit	Date Made Public
1. Constructive Citizenship Program	1/8/80
2. Southwestern Committee on Political Education	1/8/80
3. Vision Political Action Committee	1/15/80
4. Committee to Elect Ronnie Gene Flippo, AL/5	1/15/80
5. Evans for Congress Campaign Fund, GA/8	1/15/80
6. North Pacific Dairymen's Cooperative Trust	2/5/80
7. Kansas Republican State Committee/ Kansas Republican Federal Campaign Committee	2/5/80
8. National Republican Heritage Groups Council Convention 1976	2/12/80
9. National Republican Heritage Groups 1977 Convention Committee	2/12/80
10. Del Monte Voluntary Nonpartisan Good Government Fund	2/12/80
11. 1978 National Party Conference Arrangements Committee, Inc.	2/12/80
12. Active Ballot Club, A Department of the Retail Clerks International Union	2/12/80
13. Texas Republican Congressional Committee	2/20/80

PUBLICATIONS

SUPPLEMENT TO 1979 AMENDMENTS AND 1979 RECORD INDEX AVAILABLE

A special *Supplement* summarizing the 1979 Amendments to the Federal Election Campaign Act has been sent to all *Record* subscribers. The *Supplement* outlines changes in the Act which affect the following groups: All Committees; Candidates and Their Authorized Committees; Party Political Committees; and Nonparty, Noncandidate Committees. The *Supplement* also includes information on changes which affect independent expenditures and Commission powers.

The 1979 *Record Index* has also been sent to *Record* subscribers. The *Index* enables the reader to identify and document Commission decisions made during 1979. Advisory opinions and litigation, for example, are indexed by several subject entries and by name of the parties involved.

Additional copies of the *Supplement* and the *Index* are available through the FEC Office of Public Communications, 1325 K Street, N.W., Washington, D.C. 20463; or by calling 202/523-4068 or toll-free 800/424-9530.

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THE FEDERAL ELECTION COMMISSION
RECORD

1325 K Street N.W., Washington, D.C. 20463

Volume 6, Number 5

May 1980

REGULATIONS

NEW REGULATIONS PRESCRIBED

On April 1, 1980, the Commission formally prescribed new regulations implementing the 1979 Amendments to the Federal Election Campaign Act and regulations governing the funding and sponsorship of federal candidate debates.

Regulations Implementing 1979 Amendments

The regulations implementing the 1979 Amendments to the Act modify only those parts of the regulations affected by the 1979 Amendments, i.e., 11 CFR, Parts 100-106, 108-114 and 9008.* They were published in the *Federal Register* on March 7, 1980 (45 FR 15080). An addendum to these regulations (45 FR 21209, 4/1/80) makes corrections and technical amendments to both the new regulations and regulations unaffected by the 1979 Amendments.

A special provision expediting this set of regulations (§303 of Pub. L. 96-187) enabled the Commission to prescribe them 15 legislative days after they were sent to Congress on February 28. (Normally, regulations become effective 30 legislative days after their submission, unless the House or the Senate disapproves them before that time has elapsed.)

Candidate Debate Regulations

The regulations governing the funding and sponsorship of federal candidate debates create a narrow exemption to the general prohibition against the use of corporate and union funds in connection with federal elections. The regulations establish a set of procedures permitting unions and corporations to contribute to certain nonprofit organizations that sponsor nonpartisan candidate debates. These regulations, which the FEC submitted to Congress on December 27, 1979, were published in the *Federal Register* on December 27, 1979 (44 FR 76734).

REPORTS

SPECIAL ELECTION IN WEST VIRGINIA

A special general election will be held in West Virginia on June 3, 1980. The principal campaign committees of all candidates involved in that election will receive a special notice from the FEC on their reporting requirements and filing dates. All other committees supporting candidates in the special election in West Virginia should contact the Commission for information on required reports. Information may be obtained by calling 202/523-4068 or toll-free 800/424-9530.

GEORGIA PRIMARY RESCHEDULED

The Georgia primary election for Congressional candidates has been rescheduled for August 5 (instead of August 12). This change affects the authorized committees of all federal candidates in the primary election and any other political committee that supports a federal candidate in the Georgia primary (except those filing on a monthly basis). The schedule for filing a 12-day pre-election report for the Georgia primary is as follows:

Closing Date of Books	Mailing Date of Report (if sent by registered or certified mail)	Filing Date
July 16, 1980	July 21, 1980	July 24, 1980

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*See the chart in the April 1980 *Record* indicating those parts and sections of the regulations which have been affected by being renumbered, rewritten or deleted.

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OPINIONS

ADVISORY OPINION REQUESTS

Advisory Opinion Requests (AOR's) pose questions on the application of the Act or Commission Regulations to specific factual situations described in the AOR. The following chart lists recent AOR's with a brief description of the subject matter, the date the requests were made public and the number of pages of each request. The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject	Date Made Public	No. of Pages
1980-24	Publisher's distribution of handbook to Convention delegates.	3/12/80	4
1980-25	Candidate's distribution of issue letter.	3/13/80	1
1980-26	Contributions by government contractor.	3/17/80	1
1980-27	Solicitations for trade association's separate segregated fund.	3/21/80	2
1980-28	Political ad pertaining to delegate selection published in general circulation newspaper.	3/26/80	1
1980-29	Candidate's use of campaign funds to defray delegate expenses.	3/26/80	1
1980-30	Use of 1980 campaign funds in 1982 campaign and promotion of candidate's delegate selection.	3/27/80	3
1980-31	Get-out-the-vote services by labor organization.	3/27/80	1
1980-32	Use of funds from current campaign to liquidate debts of prior campaigns.	3/28/80	1
1980-33	Trade association's sponsorship of nonpartisan voter registration and get out-the-vote program.	4/2/80	3
1980-34	Donation of volunteer artwork to Presidential committee.	4/2/80	3
1980-35	Permissible activities of nonpartisan, unincorporated membership organization.	4/4/80	3
1980-36	Authorization notice for campaign committee's publications.	4/7/80	7
1980-37	Contributions by possible government contractor.	4/10/80	4
1980-38	Reporting computer-use expenses and obligations allocated between a federal and a state campaign committee.	4/14/80	2
1980-39	Investment of campaign funds in money market fund.	4/14/80	2
1980-40	Multicandidate committee status of affiliated committees.	4/14/80	3
1980-41	Use of excess campaign funds after death of officeholder.	4/14/80	1
1980-42	Fundraising concerts conducted for campaign committee.	4/16/80	3

ADVISORY OPINION REQUEST WITHDRAWN

On March 31, 1980, the following Advisory Opinion Request was withdrawn by its requester:

– AOR 1980-31.

ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR. Any qualified person who has requested an AO and acts in accordance with the opinion will not be subject to any sanctions under the Act. Other persons may rely on the opinion if they are involved in a specific activity which is indistinguishable in all material aspects from the activity discussed in the AO Those seeking guidance for their own activity, however, should consult the full text of an AO and not rely only on the summary given here.

AO 1980-5: Delegate Selection

Payments made by individuals to the Louisiana Democratic State Central Committee (the State Committee) for the purpose of qualifying as delegates to the 1980 Democratic National Presidential Nominating Convention are not considered contributions or expenditures because such individuals are not candidates for federal office under the Act. 2 U.S.C. §431(3). Accordingly, the qualifying fee paid to the party would **not** have to be reported; nor would a contribution limit be imposed on the fee. The fee may not, however, be paid from contributions prohibited under the Act. 2 U.S.C. §§441b and 441e.

The Act and Commission regulations would, however, apply to certain expenses relating to the delegate's campaign, as follows:

Expenditures Made by Delegate for His/Her Selection Only. Expenditures made from contributions received by the delegate candidate from individuals, or from the delegate's personal funds, and used to advocate **only** the delegate's selection, would not be subject to the Act's expenditure limits; nor would they be reportable. However, contributions from individuals would be chargeable to the contributor's $25,000 annual contribution limit. 2 U.S.C. §441a(a)(3). In addition, the delegate may not accept contributions from sources prohibited under the Act. 2 U.S.C. §§441b and 441e.

continued

Expenditures by Delegate for Campaign Materials. Expenditures made by delegate candidates for campaign materials (e.g., bumper stickers, pins, handbills, posters, yard signs and brochures) which are used in connection with volunteer activity and which advocate his/her selection, but also refer to a Presidential candidate, are neither limited nor reportable. 2 U.S.C. §431(8)(B)(xi).

Expenditures by Delegate for Public Media. Expenditures by delegates for public media (e.g., broadcast facilities, newspapers, magazines, billboards, direct mail or similar types of general public communications or public advertising) which both advocate the delegate's selection and refer to a Presidential candidate would count either as:

1. **An independent expenditure** if the expenditure expressly advocated the election of a clearly identified Presidential candidate and was **not** made in consultation or cooperation with the Presidential candidate or any of his authorized committees or agents (2 U.S.C. §434(c) and 11 CFR 109.2(b)); or
2. **An in-kind contribution** to the Presidential candidate if the expenditure were made in consultation with the Presidential campaign. Only that portion of the expenditure allocable to the Presidential candidate would be considered an in-kind contribution chargeable to his expenditure limits.

Expenditures by Delegate Slate. If a delegate campaigns through a delegate slate, the delegate slate becomes a political committee if its expenditures exceed $1,000 during a calendar year. 2 U.S.C. §431(4). The delegate slate political committee would be subject to the reporting requirements, contribution limits and prohibitions of the Act relating to all other political committees. Expenditures for public media advertising made by the delegate slate committee to advocate selection of a delegate, but which also refer to a Presidential candidate, would be considered allocable independent expenditures or allocable in-kind contributions made by the committee on behalf of the Presidential candidate. 2 U.S.C. §§434(b)(6)(B), 441a(a)(7) and 441a(b)(2). (Date Issued: March 10, 1980; Length: 4 pages)

AO 1980-8: Transfer of Funds From State PAC to Federal PAC

The transfer of funds from the Beloit Corporation's state political action committee (State PAC) to its federal political action committee (Federal PAC) would be permissible under the circumstances described in the opinion.

In December 1979, the Beloit Corporation consolidated its State PAC and Federal PAC into the Beloit Corporation PAC (the Committee). At the time of consolidation, the balance of the State PAC's funds ($216.45) was transferred to the Committee. Since $200.00 of the transferred funds had previously been transferred by the Federal PAC to the State PAC and were, therefore, funds permissible under the Act, the Committee may retain the funds. The remaining $16.45 may also be retained by the Committee provided that the State PAC functioned under Wisconsin law as a separate segregated fund whose contributions came from individuals **or** the Committee can demonstrate the funds represented contributions permissible under the Act. (Date Issued: March 13, 1980; Length: 2 pages)

AO 1980-9: Communication Costs Paid by Political Committee

Costs incurred by Arizonans for Life (the Committee) in printing and mailing a letter which contained statements relating to Senator Edward M. Kennedy's Presidential candidacy are not considered "independent expenditures." Costs of the letter must, however, be reported as general disbursements by the Committee in accordance with 2 U.S.C. §§434(b)(4)(H) and 434(b)(6)(B)(v).

Although the letter clearly identified Senator Kennedy as a candidate for Federal office and, as indicated by the request, was not produced in cooperation or consultation with Senator Kennedy's campaign, the letter still did **not** qualify as an independent expenditure, as defined by 2 U.S.C. §431(17), because it did not **expressly advocate the election or defeat** of Senator Kennedy. Commission Regulations specifically define "express advocacy" as a communication which contains, but is not limited to, such words as: "vote for," "cast your ballot for," "Smith for Congress," or, conversely, "vote against," "defeat," or "reject." 11 CFR 109.1(b)(2). (Date Issued: March 13, 1980; Length: 2 pages)

AO 1980-10: Title of a Corporate Political Action Committee

United Telecom Political Action Committee, the separate segregated fund of United Telecommunications, Inc. (the Committee), must change its official name to "United Telecommunications, Inc. Political Action Committee" since the 1979 Amendments to the Act require a separate segregated fund to include the full name of its connected organization in its title. 2 U.S.C. §432(e). Further, the Committee must file an amended Statement of Organization with the Commission reflecting this name change. 2 U.S.C. §433(c).

While its official name must appear on all disclosure reports and notices of sponsorship (2 U.S.C. §441d), the Committee may continue to use its abbreviated name, "United Telecom Political Action Committee," on its letterhead and on committee checks. (Date Issued: March 10, 1980; Length: 2 pages)

AO 1980-11: Contributions by Spouse

An individual who has neither a personal checking account nor a joint checking account may make contributions to Rufus C. Phillips III's 1978 Senatorial campaign by using a check drawn on the account of a spouse, even if the spouse has already contributed $1,000 to the candidate. However, the check, or an accompanying written statement, must indicate whose contribution the check represents and must be signed by the intended contributor. (Date Issued: March 10, 1980; Length: 2 pages)

AO 1980-14: Transfer of Campaign Materials

Ralph M. Hall may use campaign materials from his 1972 campaign in his 1980 campaign. The value of the materials must be reported as an in-kind contribution from Mr. Hall to his 1980 principal campaign committee, Hall for Congress.

continued

The Act and Commission Regulations permit the unlimited transfer of funds between a candidate's previous campaign committee and his or her current committee provided none of the funds transferred contain contributions prohibited under the Act. 11 CFR 110.3(a)(2)(iv) and 2 U.S.C. §441a, 441b, 441c and 441e. In this case, since the campaign materials to be transferred were originally purchased by Mr. Hall from personal funds, and thus do not represent contributions prohibited under the Act, the amount to be transferred is not limited. 11 CFR 110.3(a)(2)(iv) (Date Issued: March 21, 1980; Length: 2 pages)

AO 1980-16: Corporate Payment of Expenses for Candidate's Participation in Charity Event

Corporate payment of the expenses incurred by federal officeholders during their participation in a charity-fundraising golf tournament sponsored by the Danny Thompson Memorial Leukemia Fund would not constitute either contributions or expenditures under the Act (2 U.S.C. §§431(8) and (9)), even though some of the officeholders may also be candidates for federal office. The major purpose of the golf tournament is to raise funds for leukemia research rather than to promote the nomination or election of any candidate. Therefore, as long as the tournament neither solicits campaign funds nor advocates the election of a participating candidate, corporate sponsors of the event may provide transportation, lodging and meals to the candidates without making prohibited corporate contributions. (Date Issued: March 21, 1980; Length: 2 pages)

AO 1980-17: Fundraising by Multicandidate Committee

The Alternatives Fund (TAF), a multicandidate political committee, may contract with individuals to solicit contributions to TAF. Under the terms of a contract, TAF would reimburse each individual for all receipt-verified expenses incurred by the fundraising effort and would pay each individual a fixed percentage of the total contributions he/she raised. By receiving reimbursement for his/her expenses, the fundraiser would avoid making a contribution to TAF. Moreover, since the services rendered by the individual fundraisers would qualify as uncompensated volunteer services, they would not be considered in-kind contributions to TAF even if the percentage fee were less than the normal and usual charge paid for such services. 11 CFR 100.4(a)(iii)(A).

If, however, TAF contracted with a person who could not provide volunteer services under the Act, such as a corporation or government contractor, TAF would have to pay the usual and normal charge for fundraising services. Any difference between the usual and normal charge and the price paid by TAF to the fundraising organization would result in an in-kind contribution to TAF and would be subject to the Act's limits and prohibitions on contributions. 2 U.S.C. §§441a and 441b.

Total funds raised by the fundraisers must be recorded and reported as contributions. The percentage fees paid to the fundraisers, as well as reimbursements of fundraising costs, must be reported as expenditures by TAF. (Date Issued: March 28, 1980; Length: 3 pages)

AO 1980-19: Sale of Poll by Labor Union

The sale of poll results by the Wendell Young for Congress Committee (the Committee) to the United Food and Commercial Workers Union (the Union) would result in a prohibited contribution to the Committee by the Union. By selling the opinion poll, which a professional polling firm conducted under contract to the Committee, the Committee would recoup the fee it had paid the polling firm for the poll ($9,400), while still receiving the benefit of the information produced by the poll. The Union, in effect, would be paying for the poll on behalf of the Committee, thus making a prohibited in-kind contribution to the Committee. (Date Issued: March 14, 1980; Length: 3 pages)

FEDERAL REGISTER NOTICES

The following list identifies all FEC documents which appeared in the *Federal Register* between March 19, 1980 and April 17, 1980.

Notice	Title	Federal Register Publication Date	Citation
1980-9	Multicandidate Political Committees; Index (Notice of publication)	3/19/80	45 FR 17633
1980-10	Amendments to the Federal Election Campaign Act of 1971 (Announcement of effective date for Regulations implementing 1979 Amendments to the FECA)	4/1/80	45 FR 22211
1980-11	Technical Amendments and Corrections (Technical revisions to Commission Regulations)	4/1/80	45 FR 21209
1980-12	Funding and Sponsorship of Federal Candidate Debates (Announcement of effective date for new Regulations)	4/1/80	45 FR 21210
1980-13	Federal Candidate Debates Funding and Sponsorship; Federal Election Campaign Act Amendments of 1979 Regulations; Corrections	4/8/80	45 FR 23642
1980-14	Presidential Election Campaign Fund; Presidential Primary Matching Fund (Transmittal of Regulations to Congress governing suspension of matching fund eligibility)	4/15/80	45 FR 25378
1980-15	Filing Date for West Virginia Special General Election	4/17/80	45 FR 26131

800 LINE

REPORTING AND RECORDKEEPING REQUIREMENTS

The Public Communications Office of the Federal Election Commission receives numerous inquiries from the public on its toll-free line 800/424-9530. The following explanation of reporting and recordkeeping requirements are presented in response to specific questions concerning the new FEC regulations. This information is not exhaustive. For detailed information, consult FEC Regulations 11 CFR 102.9 and 104.3.

Disbursements: Recordkeeping vs. Reporting

Recordkeeping:

- Committees must keep records of every disbursement, regardless of amount.
- In addition to keeping records of all disbursements, committees must keep additional documentation for each **single** disbursement that exceeds $200. (This additional documentation may consist of a canceled check, receipt or bill.)

Reporting:

- Committees must include all disbursements in the total figure for disbursements, regardless of amount.
- Committees must itemize all contributions and transfers to other committees, regardless of amount.
- However, committees must itemize other disbursements only when they **aggregate in excess of $200** to the same person per year. 11 CFR 102.9(b)(1).

Note the contrast: No aggregation is necessary in determining which disbursements require additional documentation for recordkeeping purposes. Documentation is required only for **single** disbursements (other than contributions or transfers) in excess of $200. On the other hand, aggregation **is** required to determine which disbursements must be itemized on the report. 11 CFR 104.3(b)(3) and (4).

Name of Employer

In reporting itemized receipts, political committees need only list the name of the contributor's employer under "Name of Employer."

Pre-election Report by Nonauthorized Committee

A nonauthorized political committee is not required to file a pre-election report disclosing contributions and expenditures made on behalf of a candidate involved in that election if the committee has disclosed these disbursements on a previous report. 11 CFR 104.5(c)(1)(ii).

Bank Loans

The contribution exemption for bank loans* has been expanded to include loans made by federally chartered depository institutions or depository institutions which are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Administration. Such loans are not considered contributions, but they must be reported. 11 CFR 100.7(b)(11).

INFORMATION

COMPTROLLER OF THE CURRENCY ISSUES NOTICE TO ALL NATIONAL BANKS

On February 19, 1980, the Comptroller of the Currency issued a circular to all national banks notifying them of the Federal Election Campaign Act's prohibition on contributions and expenditures by national banks. The Banking Circular, which the Comptroller prepared in consultation with the Commission, rescinded Banking Circular No. 82 of December 17, 1976.

Contributions and Expenditures in Connection with Elections

National banks may **not** make contributions or expenditures in connection with any election to **any** public office at the local, state or federal level – including any primary election, political convention or caucus held to select candidates for public office. 2 U.S.C. §441b(b)(2). This would include purchase of political dinner tickets and placement of advertisements in political literature (e.g., a program for a political fundraising dinner).

Partisan Communications

Although a national bank may direct partisan communications to its stockholders, executive and administrative personnel and their families, it may not sponsor partisan political communications directed to the general public. 2 U.S.C. §441b(2)(A).

Exempted Expenditures and Contributions

The circular noted that the Act's ban on campaign contributions and expenditures does not extend to the following payments by national banks:

1. *Bona Fide Loans.* National banks may make a loan to a candidate for public office, provided the loan is made in the ordinary course of business and conforms to applicable banking laws and regulations. 2 U.S.C. §431(8)(B)(vii).
2. *Sponsorship of Separate Segregated Funds.* National banks may establish, administer and solicit contributions to a separate segregated fund (political action committee or PAC). They may not, however, make contributions to the separate segregated fund. 2 U.S.C. §441b(b)(2)(C).

Enforcement of the Act's Provisions

If a bank examiner representing the Comptroller of the Currency uncovers a political contribution or expenditure by a national bank, this information will be referred to the Commission. At the same time, the Comptroller of the Currency will require the bank to demand reimbursement of the illegal contribution from the recipient.

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*To qualify as an exempted contribution, a bank loan must be made in the ordinary course of business and according to applicable banking laws and regulations. 11 CFR 100.7(b)(11).

PUBLIC FINANCING

FEC TERMINATES MATCHING FUNDS ELIGIBILITY OF FIVE CANDIDATES

During March and April 1980, the FEC terminated the eligibility of five Presidential candidates for primary matching funds. Edmund G. Brown, Jr., Robert Dole, Philip M. Crane and Lyndon H. LaRouche became ineligible for public funds when they failed to receive 10 percent of the total electoral votes in two consecutive primaries. 11 CFR 9033.4(b). Howard H. Baker became ineligible when he announced publicly that he would no longer actively campaign for his party's Presidential nomination. 11 CFR 9033.4(a)(1). The name of each candidate, together with his date of ineligibility, appears in the chart below:

Presidential Primary Candidate	**Date of Ineligibility for Primary Matching Funds**
Howard H. Baker	March 5, 1980
Edmund G. Brown, Jr.	April 3, 1980
Philip M. Crane	April 3, 1980
Robert Dole	March 27, 1980
Lyndon H. LaRouche	April 17, 1980

These ineligible candidates may continue to receive primary matching funds to retire outstanding campaign debts incurred **before** the date of ineligibility. They may receive federal matching funds for private contributions received and deposited before December 31, 1980, provided they have submitted a statement of outstanding debts within 15 days after becoming ineligible.

Any one of these candidates may reestablish eligibility for matching funds by receiving 20 percent or more of the vote in a subsequent primary. 11 CFR 9033.7(b)

FEC PUBLISHES NAMES OF NONFILERS

On March 14, 1980, the Federal Election Commission published the names of two nonfilers who failed to file their pre-election report for the Illinois special election held on March 18. The reports for the Congressional primary were due March 6.

Under Commission procedures, notices are sent to all political committees which fail to file required reports, reminding them of their reporting obligations and urging compliance. If a committee does not file the report(s) within four business days after receiving the notice, the name of that "nonfiler" is made public, as required by law. This notification and publication precede any compliance action which the Commission might undertake against the nonfiler, including civil enforcement and imposition of civil penalties.

LEGISLATION

FEC TESTIFIES ON ELECTION COSTS AND ABSENTEE BALLOT SYSTEMS

On March 13, 1980, FEC Chairman Robert O. Tiernan testified before the House Subcommittee on Postal Operations and Services on election administration costs and estimated costs of implementing a series of bills which would provide postage-free mailing of absentee ballots. Chairman Tiernan was accompanied by FEC Vice Chairman Max L. Friedersdorf, Dr. Gary Greenhalgh, Assistant Staff Director for Information and Director of the National Clearinghouse on Election Administration, and William Kimberling, Deputy Director of the Clearinghouse.

In his testimony, Chairman Tiernan noted that state and local governments will spend close to $300 million for administration of the 1980 elections. He further observed: "These governments will absorb close to $1 billion in election administration costs between 1978 and 1981, and these estimates do not reflect the 47.2 percent jump in the Consumer Price Index since 1974."

Chairman Tiernan cited a number of factors affecting both the costs of implementing a postage-free absentee ballot system and the volume of ballots returned. These factors include:

- **Type of election** - whether federal, state, local or special jurisdictions.
- **Kind of election** - whether general, primary, runoff or special.
- **Number and timing of elections** - the degree of consolidation of local elections and whether local and state elections are timed to coincide with federal elections.
- **Type and weight of absentee ballot items mailed and mailing method used.**
- **Legal, social, and geographic characteristics of each jurisdiction** - the number of those eligible to vote absentee and those needing to vote absentee.

In discussing benefits of the proposed legislation, Chairman Tiernan said, "There can be no question that a postage-free absentee ballot system may increase the return of absentee ballots." He cited as examples LaSalle County, Illinois, and Pima County, Arizona, which both have postage-free systems, and Los Angeles County, California, which does not. "LaSalle and Pima Counties have a return rate of 93 percent on absentee ballots and Los Angeles County has only 69 percent," he said. He also noted that the proposed postage-free system would benefit home-bound persons, such as the elderly and handicapped, who find it as difficult to go to the post office as they do to go to the polls on election day.

FEC REQUESTS SUPPLEMENTAL APPROPRIATIONS

On February 15, 1980, the Commission submitted to the Senate and House Appropriations Committees a request for a $410,000 supplemental appropriation to cover the government-wide pay raise effective October 1, 1979. This request had already been presented to the Office of Management and Budget (OMB), which tentatively approved a supplemental appropriation of $393,000 for the Commission.

On March 26, the Commission made an additional request for $140,000 when hearings were held before the Senate Rules Committee on the FEC's 1981 Fiscal Year appropriation and authorization requests. This second request, submitted to OMB on April 7, would provide for the orderly implementation of the 1979 Amendments to the Act (Pub. L. 96-187) during the 1980 elections. The supplemental appropriation would help defray costs required for the printing of new regulations in the *Federal Register*, for additional mailings, seminars and other assistance programs to inform filers of their obligations under the newly amended law, and for the increased costs of the Kodak microfilming process used to disclose campaign finance reports.

Both FY 1980 supplemental requests were resubmitted to the Senate Appropriations Committee on April 30, when further hearings were held on the FY 1981 appropriation. Hearings were also held before the House Administration Committee on April 23.

AUDITS

AUDITS RELEASED TO THE PUBLIC

The Act gives the Commission authority to audit campaigns of all Presidential candidates who receive public funds, and the reports of other political committees. Final audit reports are available to the press through the Press Office and to the general public through the Office of Public Records. The following is a chronological listing of audits released between February 21, 1980, and April 15, 1980:

Audit	Date Made Public
1. College Republican National Committee	2/21/80
2. American Party of the United States	3/5/80
3. Missouri Republican State Committee-Federal Committee	3/5/80
4. National Conservative Political Action Committee	3/17/80
5. Republican Party of Wisconsin	3/31/80
6. Agricultural and Dairy Educational Political Trust	3/31/80

CLEARINGHOUSE

DIRECTORY OF ELECTION OFFICIALS AVAILABLE

The Clearinghouse recently announced the availability of the *Election Directory '80*, a handbook designed to facilitate communication among election officials nationwide. The *Directory* consists of two parts: Part I is a synopsis of each state's election offices and functions, and election officials and their duties; Part II is a current list of all election personnel, including federal and state officials, chairmen of state legislative committees, state legislative reference services and officers of associations of election officials.

The Clearinghouse revises and updates the *Directory* annually. Any comments, suggestions or corrections should be addressed to the Clearinghouse at the FEC, or telephone 202/523-4183; toll free 800/424-9530.

To purchase a copy of the *Directory*, send $5.00 (check or money order) payable to the Superintendent of Documents, together with the report number (052-006-00003-1), to:

Superintendent of Documents
Government Printing Office
Washington, D.C. 20402

SUBSCRIPTIONS TO ELECTION LAW UPDATES AND ELECTION CASE LAW SERIES

The following subscriptions are available from the FEC's Clearinghouse:

- *Election Law Updates.* This quarterly series includes a synopsis of all key federal and state election laws, a comprehensive index to aid in research and an annual cumulative summary. Subscription price: $11.00 a year.
- *Election Case Law.* This quarterly series is similiar in design and concept to the *Election Law Updates.* All federal and state election cases are summarized and indexed. Subscription price: $10.00 a year.

Please do **not** send checks or money orders to the Commission. For information on how to subscribe, please write: Clearinghouse – FEC, 1325 K Street, N.W., Washington, D.C. 20463; or call 202/523-4183 locally or toll-free 800/424-9530.

CHANGE OF ADDRESS

Political Committees

Registered political committees are automatically sent the *Record*. Any change of address by a registered committee must, by law, be made in writing as an amendment to FEC Form 1 (Statement of Organization) and filed with the Clerk of the House, the Secretary of the Senate or the FEC, as appropriate.

Other Subscribers

Record subscribers (who are not political committees), when calling or mailing in a change of address, are asked to provide the following information:

1. Name of person to whom the *Record* is sent.
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3. New address.
4. Subscription number. The subscription number is located in the upper left hand corner of the mailing label. It consists of three letters and five numbers. Without this number, there is no guarantee that your subscription can be located on the computer.

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THE FEDERAL ELECTION COMMISSION RECORD

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June 1980

Volume 6, Number 6

COMMISSIONERS

NEW OFFICERS ELECTED

On May 14, 1980, the Federal Election Commission unanimously elected Vice Chairman Max L. Friedersdorf as its new Chairman and Commissioner John Warren McGarry as its new Vice Chairman. The new officers began their one-year terms of office on May 19, 1980.

The Federal Election Campaign Act permits Commissioners to serve as Chairman only once during their six-year terms. The law also limits the Chairman's and Vice Chairman's term of office to one year, and requires that both officers be affiliated with different political parties. Previous Chairmen were Thomas B. Curtis (1975-76), Vernon W. Thomson (1976-77), Thomas E. Harris (1977-78), Joan D. Aikens (1978-79) and Robert O. Tiernan (1979-80).

Chairman Friedersdorf served as Staff Director of the Senate Republican Policy Committee from January 1977 until his appointment to the Commission in February 1979. A native of Indiana, Mr. Friedersdorf received his B.A. from Franklin College in 1952 and earned an M.A. from American University in 1970. He pursued a journalism career before serving as administrative assistant and press secretary for former Congressman Richard L. Roudebush (R-Ind.) from 1961 to 1970. In 1970, he was Director of Congressional Relations for the Office of Economic Opportunity. From 1971 to 1977, Mr. Friedersdorf served in several White House posts. He was Deputy Assistant for Congressional Affairs to President Nixon from 1971 to 1974. He continued as Deputy Assistant to President Ford until 1975, when he became the President's Assistant for Legislative Affairs.

Vice Chairman McGarry was appointed to the Commission in October 1978. He formerly served as special counsel on elections to the Committee on House Administration in the U.S. House of Representatives. From 1963 through 1972, he engaged in private law practice and also served as chief counsel for the House Special Committee to Investigate Campaign Expenditures. From 1959 through 1962, Mr. McGarry was Assistant Attorney General of Massachusetts. A 1952 graduate of Holy Cross College, Mr. McGarry received his law degree from Georgetown Law Center in 1956.

REPORTS

GEORGIA PRIMARY RUNOFF RESCHEDULED

A runoff election for Congressional candidates will be held in Georgia on August 26, instead of September 2, if no candidate obtains a majority of the vote in the state's August 5 primary election. In the event of a runoff election, the schedule for filing a 12-day pre-election report by committees supporting candidates for federal office is as follows:

Closing Date of Books	Mailing Date of Report (if sent by registered or certified mail)	Filing Date
August 6, 1980	August 11, 1980	August 14, 1980

REGULATIONS

REGULATIONS GOVERNING SUSPENSION OF MATCHING FUNDS REVISED

On April 15, 1980, the FEC transmitted to Congress revised regulations governing the suspension of primary matching fund payments to Presidential candidates. The proposed revisions affect the following provisions of 11 CFR 9033.9:

Standard for Determining Violation of Spending Limits

The Commission could suspend matching fund payments to a candidate only if he or she knowingly, willfully and **substantially** exceeded the spending limits for matching fund recipients stipulated at 26 U.S.C. §9035. Under current Commission Regulations, promulgated on May 7, 1979, the Commission may suspend matching fund payments to a candidate who knowingly and willfully exceeds the spending limits.

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Permanent Suspension of Eligibility

A Presidential primary candidate who exceeded the spending limits would **not** be permitted to reestablish matching fund eligibility after payments had been suspended. Under current regulations, payments to a candidate may resume if he or she repays an amount equal to the excessive expenditure and pays, or agrees to pay, any civil or criminal penalties resulting from this violation.

The proposed regulations, together with their explanation and justification, were published in the *Federal Register* on April 15, 1980, and will become effective after 30 legislative days have elapsed, provided neither House of Congress disapproves them. 45 FR 25378.

FINAL REGULATIONS GOVERNING ACCESS TO PUBLIC RECORDS PUBLISHED

On May 13, 1980, the Commission published in the *Federal Register* (45 FR 31291) revised Freedom of Information Act Regulations (11 CFR Part 4) and new regulations governing access to Public Disclosure Division documents (11 CFR Part 5). These regulations, which will become effective on June 12, 1980, provide uniform disclosure procedures and fees for documents the Commission provides to the public pursuant to its public disclosure duties and documents the Commission provides through the Freedom of Information Act.

FEC PUBLIC APPEARANCES

6/3	George Washington University Seminar on Political Action Committees Washington, D.C. Commissioner Frank P. Reiche
6/24	Election Commissioners of New York Buffalo, New York Dr. Gary Greenhalgh
7/2	National Association of County Recorders and Clerks Las Vegas, Nevada William C. Kimberling

800 LINE

The Public Communications Office receives numerous inquiries from the public on its toll-free line: (800)424-9530. The following explanations are offered in response to questions frequently asked about procedures for terminating reporting obligations and for reporting ongoing financial activity.

TERMINATING REPORTING OBLIGATIONS

Following the 1980 primary elections, many candidate committees may wish to terminate their reporting obligations under the Act. The explanation given below outlines procedures for winding down campaign activity, i.e., liquidating campaign debts, using excess campaign funds and terminating committee registration (and thus reporting obligations). All citations refer to FEC Regulations.

RECEIVING CONTRIBUTIONS AFTER THE PRIMARY TO RETIRE CAMPAIGN DEBTS

Committees authorized by defeated primary election candidates (not entered in a subsequent general election) may receive contributions after the primary election to retire a primary debt provided that:

1. The contributions do not exceed the net outstanding debts from the primary;
2. Each such contribution is specifically designated by the donor to retire the primary debt; and
3. Such contributions are regarded as contributions for the primary and, when added to any other primary election contributions from the same donor, fall within the donor's primary election contribution limit. 11 CFR 110.1(a)(2)(i).

FORGIVING DEBTS

General Rule

If a committee fails to pay a campaign debt in a timely fashion consistent with normal business or trade practice, the debt in effect becomes a contribution made by the creditor to the committee, unless the creditor has made a commercially reasonable attempt to collect the debt. 11 CFR 100.7(a)(4). Contributions made under such circumstances may violate the Act. For example, all contributions from corporations, unions, national banks, Government contractors or foreign nationals are illegal under the Act. Or, as another example, continued nonpayment of a debt owed to a person who may lawfully make contributions may cause the creditor to exceed the Act's $1,000 per election contributor limit.

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Rules for Corporate Creditors

Debt Treated in Commercially Reasonable Manner. A corporate creditor may not forgive debts for less than the amount owed unless the creditor and debtor have treated the debt in a **commercially reasonable manner**. This means that:

1. Credit was extended "in the ordinary course of business" with terms substantially similar to those granted to nonpolitical debtors of similar credit risk;
2. The debtor made all reasonable efforts to retire the debt; and
3. The creditor pursued remedies in a manner similar to those used to seek payment from nonpolitical debtors. 11 CFR 114.10.

Statement of Settlement. If a debt owed to a corporation is settled for less than the amount owed and the debtor wishes to terminate reporting status, the corporate creditor and/or debtor (committee) must file a Statement of Settlement with the FEC for Commission review before the committee terminates. This Statement must include:

1. The initial terms of credit;
2. The steps the debtor took to extinguish the debt;
3. The remedies pursued by the creditor; and
4. The terms of settlement. 11 CFR 114.10.

Rules for Noncorporate Creditors

Debt Treated in Commercially Reasonable Manner. A noncorporate creditor may demonstrate to the Commission that it has made a "commercially reasonable attempt" to collect a debt owed to it by a committee, and thereby settle the debt without the settlement being considered a contribution, provided that: the credit was extended in connection with providing goods and/or services to a political committee in the normal course of a business or professional enterprise. (A debt involving only the lending of money could not, therefore, be forgiven without a contribution being made.)

FEC Review of Debt Settlement. The settlement of any debt owed to a noncorporate creditor by a committee is subject to FEC review if either:

1. The amount of the debt forgiven causes the creditor to exceed contribution limitations (when added to any other contributions made by the creditor to the same candidate); or
2. The creditor wishes the entire amount of the forgiveness to be regarded as a debt settlement (and so notifies the Commission), rather than as a contribution in-kind.

In either case, a Statement of Settlement similar to that required when corporate debts are settled (above) would have to be submitted to the Commission by the creditor and/or debtor. (Directive 3, May 10, 1978.)

EXCESS CAMPAIGN FUNDS

Contributions received by the candidate or his/her committee which, in the candidate's view, exceed the amount of funds needed to defray campaign expenditures may be used for the following purposes:

1. Future election. 11 CFR 110.3(a)(2)(iii) and (iv).
2. Defrayal of federal officeholder expenses. 11 CFR 113.2(a).
3. Donations to charity. 11 CFR 113.2(b).
4. Unlimited contributions to national, state or local party committees. 11 CFR 113.2(c).
5. Repayment of loans made by the candidate to his/her committee. 11 CFR 113.2(d).
6. Any other lawful purpose, except personal use.* 11 CFR 113.2(d).

TERMINATING REPORTING STATUS

Termination by Authorized Committee

An authorized committee may terminate its registration (and reporting obligations) only when all its debts and obligations have been extinguished and after it no longer intends to receive any contributions or make any expenditures. A principal campaign committee may terminate only when it has satisfied these same requirements and when all the debts of other authorized committees have been extinguished. 11 CFR 102.3.

Authorized committees, including the principal campaign committee, terminate their reporting status by filing a **Termination Report**. It may be filed on FEC Form 3 or by a written statement containing the same information. 11 CFR 102.3(a). The **Termination Report** must disclose:

1. All receipts and disbursements not previously reported, including an accounting of the retirement of all debts; and
2. The disposition of all residual funds.

Administrative Termination by FEC

The Commission, upon its own initiative or upon the request of a political committee, may administratively terminate a committee's reporting obligations if the committee's financial activity has been minimal during the previous year. For details on administrative termination, consult 11 CFR 102.4.

REPORTING ITEMIZED AND UNITEMIZED CONTRIBUTIONS

Itemized Contributions

Committees must itemize every contribution received from another committee, regardless of amount. In addition, committees must itemize contributions from any person (such as a partnership or an individual) who makes a single contribution exceeding $200 or whose total contributions during the year exceed $200. Thereafter, each **additional** contribution from that person must be separately itemized. Committees must also itemize every loan received, regardless of amount. If a bank loan has been endorsed or guaranteed, the committee must identify the endorser or guarantor in a memo entry.

Itemized contribution information, entered on Schedule A of the reporting form, must include:

1. *Identification of the contributor:* the contributor's full name, mailing address, occupation and name of employer; and

continued

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*The prohibition on using excess funds for personal use does not apply to candidates who were Members of Congress on January 8, 1980.

2. *Description of the contribution* the date and amount of the contribution; whether the contribution was designated for a primary, general or other election; and total contributions received from the same contributor during the year (aggregate year-to-date).

Unitemized Contributions

The total amount of contributions received from individuals (persons other than political committees and candidates) during the reporting period is reported on the Detailed Summary Page, Line 11a, Column A, of Forms 3 and 3X. The total amount of contributions **not** itemized on Schedule A during the reporting period must be reported as a memo entry on the line directly below 11a on the Detailed Summary Page of Forms 3 and 3X. This figure will include contributions from any person whose total contributions have not aggregated in excess of $200 for the year and have not been itemized on Schedule A. Thus, unitemized contributions listed as a memo entry are added to all itemized contributions on Schedule A, and the total is shown on Line 11a, Column A, of the Detailed Summary Page.

REPORTING PARTNERSHIP CONTRIBUTIONS

A partnership is considered a "person" under the Act (2 U.S.C. §431(11)) and may therefore contribute as an entity. A contribution from a partnership may not exceed $1,000 per candidate, per election. 11 CFR 110.1(e)(3). A contribution from a partnership counts proportionately against each partner's contribution limit for that election. The contribution by the partnership may be attributed to each partner in direct proportion to his/her respective share of partnership profits; or according to some formula agreed on by the partners, which conforms with the provisions of 11 CFR 110.1(e)(2)(i)(ii). For example, the XYZ Partnership, consisting of four partners, contributes $1,000 to Candidate Smith. Each partner is credited with having made a $250 contribution to Smith and may then, on his/her own, make an additional contribution of up to $750 to Smith.

A political committee must report the receipt of a partnership contribution by including the contribution in total contributions reported on Line 11a of Form 3 or 3X.

In addition, if the partnership's contribution exceeds $200 (when combined with all other contributions received from the same partnership), the committee must also use Schedule A to:

- Itemize the contribution (see above); and
- Disclose, as a memo entry: 1) each partner's share of the contribution, if each partner's share exceeds $200 when combined with all other contributions from that partner; and 2) each partner's year-to-date contributions. By recording this information as a memo entry, the committee avoids counting the partnership contribution twice.

OPINIONS

ADVISORY OPINION REQUESTS

Advisory Opinion Requests (AOR's) pose questions on the application of the Act or Commission Regulations to specific factual situations described in the AOR. The following chart lists recent AOR's with a brief description of the subject matter, the date the requests were made public and the number of pages of each request. The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject	Date Made Public	No. of Pages
1980-43	Reporting by 1974 candidate committee with outstanding debt to candidate.	4/21/80	7
1980-44	Solicitations by labor organization for its separate segregated fund.	4/23/80	5
1980-45	Nonpartisan voter registration activities conducted by nonprofit organization.	4/23/80	3
1980-46	Contributions to candidate solicited by unauthorized multicandidate committee.	4/23/80	2
1980-47	FECA preemption of state law on compensation of campaign workers.	4/24/80	5
1980-48	Definition of corporation and cooperative; solicitations by cooperative association.	4/25/80	2
1980-49	Candidate's use of campaign funds for personal expenses.	4/28/80	1
1980-50	Solicitations for corporation's separate segregated fund through orientation meeting.	4/28/80	2
1980-51	Services provided political committees by bank employees during banking hours.	4/30/80	1
1980-52	Application of contribution limits to funds received by independent expenditure committee.	4/30/80	2
1980-53	Host committee's distribution of tote bags, contributed by corporation, to delegates attending major party convention.	5/2/80	2
1980-54	Contribution by national bank to state political action committee.	5/7/80	8
1980-55	Corporate assistance to nonpartisan voter registration drives sponsored by state or local election officials.	5/8/80	2

AOR	Subject	Date Made Public	No. of Pages
1980-56	Minor party's receipt of retroactive public funding for Presidential general election.	5/9/80	1
1980-57	Fundraising by candidate to pay for litigation expenses related to election.	5/9/80	14
1980-58	Contribution by national bank to state senator's officeholder expense fund.	5/13/80	3
1980-59	Member corporation's contribution to administrative fund of trade association's separate segregated fund.	5/14/80	2
1980-60	State party convention as election.	5/14/80	2

ADVISORY OPINION REQUESTS WITHDRAWN

Since May 8, 1980, the following Advisory Opinion Requests (AOR's) have been withdrawn by their requesters:

- AOR 1979-79
- AOR 1980-35

ALTERNATE DISPOSITION OF ADVISORY OPINION REQUESTS

Since March 14, 1980, the FEC has responded to the following Advisory Opinion Requests (AOR's) with a letter issued by the Commission's General Counsel rather than by issuing an advisory opinion.

AOR 1979-45 (Formation of state senatorial general election committee(s) by National Republican Senatorial Committee). The General Counsel informed the requester in a letter issued March 14, 1980, that the Commission had failed to approve an advisory opinion by the requisite four-vote majority. 2 U.S.C. §437c(c).

AOR 1980-13 (Payment of college tuition and salary when professor is federal candidate). The General Counsel informed the requester in a letter issued May 14, 1980, that the Commission had failed to approve an advisory opinion by the requisite four-vote majority. 2 U.S.C. §437c(c).

AOR 1980-24 (Publisher's distribution of handbook to national party convention delegates). The General Counsel informed the requester in a letter issued May 9, 1980, that the Commission had determined that the request did not qualify for treatment as an AOR under the Act since it did not include a complete description of all facts relevant to the specific activity under consideration. 2 U.S.C. §437f and 11 CFR 112.1(c).

ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR's. Any qualified person who has requested an AO and acts in accordance with the opinion will not be subject to any sanctions under the Act. Other persons may rely on the opinion if they are involved in a specific activity which is indistinguishable in all material aspects from the activity discussed in the AO. Those seeking guidance for their own activity, however, should consult the full text of an AO and not rely only on the summary given here.

AO 1980-20: Nonpartisan Voter Registration Communication

Rexnord, Inc. may use corporate funds to pay for a general circulation newspaper advertisement that reads "Please Register To Vote" and that includes "Rexnord, Inc." printed in a lower corner of the ad because:

1. Rexnord's activity involves only a communication urging nonpartisan participation -- not personal services, such as driving people to polls, which would require joint sponsorship with a nonpartisan organization.
2. The Rexnord advertisement lacks any suggestion that the reader designate a political party preference when registering to vote.
3. The ad does not appeal for political participation on the part of any identifiable group to assure the well-being of a particular political party.
4. By placing the ad in a general circulation newspaper, Rexnord has not tried to determine the political preference of the audience who may read the advertisement. 11 CFR 114.4.

This opinion overrules AO 1979-48, also issued to Rexnord, Inc. and summarized in the December 1979 issue of the *Record*. Chairman Robert O. Tiernan and Commissioner Thomas E. Harris filed a dissenting opinion. Commissioner Frank P. Reiche filed a concurring opinion. (Date issued: May 1, 1980; Length: 10 pages, including dissenting and concurring opinions.)

AO 1980-21: Donation of Baseball Tickets to Host Committee of National Party Committee

The New York Yankee Baseball Club may donate tickets to the Host Committee of the National Democratic Convention for free distribution to convention delegates. The tickets will not be considered a prohibited corporate contribution by the Yankee Ball Club to the Host Committee. 11 CFR 114.1(a)(2)(viii). Nor will the tickets be considered a convention expenditure. 11 CFR 9008.7(d)(4).

The Yankee Ball Club's donation of tickets is considered a permissible in-kind contribution to the Host Committee since the free distribution of tickets will assist the Host Committee in welcoming convention delegates to New York City. 11 CFR 9008.7(d)(2). (Date Issued: April 20, 1980; Length: 2 pages)

AO 1980-22: Corporate Sponsorship of Town Meetings

Costs incurred by the American Iron and Steel Institute (an incorporated trade association) and its member com-

continued

panies in sponsoring a series of town meetings in which federal officeholders (who may be candidates) participate would not constitute either contributions or expenditures under the Act.

Since the purpose of the town meetings is to provide a forum for discussion of issues facing the steel industry, and not to nominate or elect candidates to federal office, Senators and Congressmen may participate in meetings held in their state or district provided:

1. All remarks, including pre-meeting publicity, are restricted to steel industry issues and do not include any statements expressly advocating the election or defeat of any federal candidate; and
2. Campaign contributions are neither solicited to nor accepted by the federal officeholders at the event. (Date Issued: April 15, 1980; Length: 2 pages)

AO 1980-23: Name of Separate Segregated Fund

The Agricultural and Dairy Education Political Trust (ADEPT), a separate segregated fund, must modify its official name to include the full name of its connected organization, the Mid-America Dairymen, Inc., as required by the 1979 Amendments to the Act. 2 U.S.C. §432(e). On documents such as checks and letterhead, however, ADEPT may use an abbreviated title consisting of a prefix before its current name, as long as the abbreviated title makes clear to the public who sponsors the separate segregated fund. "Mid-Am Dairymen" or "Mid-America Dairymen," two suggestions offered by ADEPT, would be adequate; "Mid-Am" or "Mid-America" would not be sufficiently recognizable by the public.

Its official name and the abbreviation must appear on an amended Statement of Organization, on all disclosure reports required under the Act, and on any sponsorship notices required under 2 U.S.C. §441d. 2 U.S.C. §433(c). (Date Issued: April 14, 1980; Length: 2 pages)

AO 1980-25: Authorization Notice on Candidate's Issue Letter

Mr. Jack Smilowitz, a Congressional candidate, is not required to include an authorization notice on a letter he intends to distribute to the public, in which he opposes a California ballot initiative. Although Mr. Smilowitz's proposed letter identifies him as a candidate and gives his party affiliation, an authorization notice is not required because the letter does not expressly advocate his election or solicit contributions to his campaign committee. 2 U.S.C. §441d. Costs incurred in writing, photocopying, and distributing the letter are reportable as expenditures by his campaign committee. 2 U.S.C. §434(b)(4). (Date Issued: April 20, 1980; Length: 2 pages)

AO 1980-26: Contributions by Government Contractor

The Stenholm for Congress Committee (the Committee) may retain contributions from an individual who is **not** a government contractor but who contracts with businesses which are under contract to the federal government. Commission Regulations specifically state that the Act's ban on contributions by government contractors does not apply to this type of situation. 11 CFR 115.1(d). (Date Issued: April 20, 1980; Length: 2 pages)

AO 1980-27: Earmarking Portion of Membership Dues For Separate Segregated Fund

The Federation of American Hospitals (FAH), an incorporated trade association, may not solicit contributions to its separate segregated fund (FedPac) by allowing individual members to direct a fixed percentage of their membership dues to FedPac without increasing the total amount of their dues.

The portion of dues earmarked for FedPac would not be personal contributions from members but, rather, would be corporate money diverted to FedPac by the member's designation. Since corporate funds thus allocated to FedPac would be used in connection with federal elections, FAH's proposed solicitation procedure is prohibited under 2 U.S.C. §441b(a). (Date Issued: April 28, 1980; Length: 2 pages)

AO 1980-28: Party Ad Promoting Delegate Selections

A payment made by the Republican Committee of Chester County (the Committee) for newspaper advertising which advocates the selection of specific delegates to attend the Republican National Convention, and which may also include an endorsement of the delegates by a Congressional candidate, would be an "expenditure" by the Committee since the purpose of the advertising is to influence a federal election. 2 U.S.C. §431(9)(A)(i). The Act specifically defines a federal election to include a "primary election held for the selection of delegates to a national nominating convention of a political party." 2 U.S.C. §431(1)(C). The Committee would report payments for the proposed newspaper advertising as follows:

Endorsement of Delegates by the Committee Only. If the advertising exceeded $1,000 (or exceeded $1,000 when combined with other contributions and expenditures made for federal elections during 1980), the Committee would have to register as a political committee and report the expenditure. 2 U.S.C. §§433 and 434.

Endorsement of Delegates by the Committee and a Congressional Candidate. If the newspaper advertising also included an endorsement of the delegates by a Member of Congress who is a candidate for re-election, the Committee would not have to allocate the costs of the advertising between the Congressional candidate and the delegates **unless** the purpose of the advertisement was also to influence the re-election of the Member of Congress. If the advertising did reflect an intent to influence the re-election of the Congressional candidate, an in-kind contribution to the candidate by the Committee would result. In that event, the candidate's campaign committee would have to report the advertising as both an in-kind contribution to, and an expenditure by, the campaign committee and would have to comply with the allocation regulations. 11 CFR 106.1. (Date Issued: April 14, 1980; Length: 4 pages)

continued

AO 1980-29: Use of Campaign Funds

Congressman Norman D. Shumway may use his campaign funds to pay for his expenses as a delegate to the National Republican Nominating Convention. The Commission has stated in previous opinions that candidates and their committees have wide discretion in deciding how to spend campaign funds.

If campaign funds are used to defray his convention expenses, the Congressman's campaign committee must report those payments as an "expenditure" if the purpose of the payment is to influence Mr. Shumway's election. If the payment is made for some other purpose, the committee must nevertheless report it as a general disbursement. 11 CFR 104.3(b)(4)(i) and (ii). (Date Issued: April 28, 1980; Length: 2 pages)

AO 1980-36: Preemption of State Law

The Ruth Miller for Congress Committee does not have to comply with an Ohio statute requiring campaign advertisements to disclose the name and address of the secretary or chairman of the committee responsible for the communication. Since the Act and Regulations supercede and preempt state law with respect to disclosure required in conducting campaigns for federal office (2 U.S.C. §453), the advertising notice requirements of §441d, which do not require the name or address of the sponsoring individual, supercede the Ohio statute. (Date Issued: April 28, 1980; Length: 2 pages)

COMPLIANCE

FEC PUBLISHES NAMES OF NONFILERS

From April 1 through May 2, 1980, the Federal Election Commission published three separate listings of nonfilers who failed to file campaign finance reports required by the Federal Election Campaign Act.

Pre-Primary Reports

On April 18 and May 2, 1980, the Commission published the names of three authorized campaign committees which had failed to file their pre-primary reports for either the Pennsylvania Congressional elections or the Indiana primary.

Quarterly Reports

On May 1, 1980, the Commission published a list of nine committees authorized by 1980 House and Senate candidates and one committee authorized by a Presidential candidate which had failed to file their quarterly reports.

THE LAW IN THE COURTS

SUPREME COURT UPHOLDS CONSTITUTIONALITY OF PUBLIC FUNDING PROVISIONS

On April 14, 1980, the U.S. Supreme Court unanimously affirmed decisions by a three-judge court of the U.S. District Court for the Southern District of New York and the *en banc* United States Court of Appeals for the Second Circuit upholding the constitutionality of the Presidential Election Campaign Fund Act challenged in *Republican National Committee, et al.* v. *Federal Election Commission, et al.*, originally filed on June 16, 1980. The Court also denied a petition for *certiorari* seeking review of the suit's dismissal by a single district judge. The RNC's appeals and petition for *certiorari*, filed with the Supreme Court on March 7, 1980, sought review of the rulings by the three lower courts that the following provisions of the public financing law were constitutional:

- Presidential candidates of a major party must agree not to make qualified campaign expenses in excess of the amount of public funds they receive; and
- candidates must certify that neither they nor any of their authorized committees will accept private contributions to defray qualified campaign expenses incurred during the general election, except to the extent necessary to make up any deficiency in public funds.

In its motion to affirm the decisions of the lower courts and its opposition to the *certiorari* petition, filed with the Supreme Court on March 24, 1980, the Commission argued that, by seeking the right to raise private money in addition to public funds, the RNC sought to "transform what Congress designed as an optional alternative to private funding of Presidential campaigns into a $29.4 million subsidy."

For a detailed summary of the suit, see the February 1979 issue of the FEC *Record*.

COURT GRANTS FEC MOTION FOR SUMMARY JUDGMENT IN NRWC SUIT

On August 31, 1979, the Federal Election Commission and the National Right to Work Committee (NRWC) filed cross motions for summary judgment in the consolidated cases of *Federal Election Commission* v. *National Right to Work Committee, et al.*, Civil Action No. 77-2175, and *National Right to Work Committee, et al.* v. *Federal Election Commission, et al.*, Civil Action No. 78-0315 (D.D.C.). On April 24, 1980, the United States District Court for the District of Columbia granted the Federal Election Commission's motion for summary judgment, denied the National Right to Work Committee's and the Employee Rights Campaign Committee's (ERCC's) cross motion for summary judgment, and dismissed with prejudice the complaint filed against the Commission by NRWC and ERCC, the separate segregated fund of NRWC.

continued

The case concerned a solicitation of funds to ERCC, which ERCC and NRWC had conducted through several mass mailings sent in 1976. Approximately 276,123 persons had been solicited, raising $77,616.87 for ERCC. In its original suit, the FEC had alleged that NRWC and ERCC had violated 2 U.S.C. §441b(b)(4)(C) by soliciting funds from persons who were not members of NRWC. In its counterclaim against the Commission, NRWC and ERCC had argued that the funds were obtained by a solicitation method permitted by 2 U.S.C. §441b(b)(4)(C) since NRWC was a corporation without capital stock and those persons solicited were members of NRWC. In addition, NRWC had challenged the constitutionality of several provisions of the Federal Election Campaign Act.

The Court held that NRWC and ERCC had knowingly and willfully violated 2 U.S.C. §441b by soliciting funds to ERCC from persons other than members of NRWC. The Court also upheld the constitutionality of 2 U.S.C. §441b, as well as the Act's limitations on corporate solicitation of funds to a separate segregated fund, finding that those pertinent sections of the Act did not abridge First Amendment rights of free speech and association. Finally, the Court found the statutory terms "members," "solicitation," and "corporation without capital stock" not to be unconstitutionally vague in violation of the First Amendment, as had been alleged by NRWC and ERCC.

Specifically, the Court found that NRWC supporters possessed none of the basic criteria of membership in an organization. NRWC's articles of incorporation explicitly stated that NRWC "shall not have members," and the actual structure and operation of the organization precluded the contributors from being defined as "members" of the organization.

In finding that NRWC and ERCC had knowingly and willfully violated the law, the Court:

- Enjoined NRWC and ERCC from making further solicitations for contributions from persons other than those prescribed by the membership exception set forth in 2 U.S.C. §441b(b)(4)(A)(i);
- Ordered NRWC and ERCC to refund the $77,616.87 in contributions received through the solicitations in question; and required that the refund include a copy of the Court's judgment and order and a notice stating unequivocally that the refund was being made pursuant to the Court's order to remedy NRWC's and ERCC's violations of the Act;
- Imposed a civil penalty of $10,000 on NRWC and ERCC, payable within ten days of the Court's ruling; and
- Awarded the Commission its costs.

FEC v. JEFFREY BELL

On April 14, 1980, the U.S. District Court for the District of New Jersey issued a consent judgment agreed to by the Commission and defendant Jeffrey Bell. The Commission had filed suit on January 21, 1980, alleging that the defendant had violated 2 U.S.C. §441a(f) by accepting excessive contributions from his mother Marjorie Bell during his 1978 Senatorial campaign in New Jersey. Mr. Bell agreed to pay a civil penalty of $1,500 levied by the Court.

FEC v. MARJORIE BELL ET AL.

On April 10, 1980, the U.S. District Court for the District of Columbia issued a consent judgment agreed to by the Commission and defendants Marjorie Bell, the Bell for Senate Committee and its two treasurers, Andrew P. Napolitano and James S. Wagner. The Commission had filed suit on July 20, 1979, claiming that Marjorie Bell had violated the contribution limits of 2 U.S.C. §§441a(a)(1)(A) and 441a(a)(3); and that the Bell Committee and its two treasurers had violated 2 U.S.C. §441a(f) by knowingly accepting excessive contributions, and 2 U.S.C. §434(b) by failing to report the actual source of the contributions. Marjorie Bell agreed to pay a civil penalty of $500 levied by the Court. The Bell for Senate Committee agreed to pay a civil penalty of $4,500 levied against both the Committee and its officers. The Committee also agreed to amend reports filed with the Commission to indicate that Marjorie Bell was the actual source of $52,400 reported as loans from Jeffrey Bell to the Committee.

FEC v. GENE A. WILLIAMSON

On April 16, 1980, the Commission and Gene A. Williamson entered into a consent decree approved by the U.S. District Court for the Eastern District of Michigan, Southern District. In its suit filed against the defendant on October 24, 1978, the Commission had alleged that Mr. Williamson had violated 2 U.S.C. §441f by permitting another person to make a political contribution in his name. The defendant agreed to pay a civil penalty of $500 assessed by the Court. The Commission agreed not to take any further action against the defendant with regard to this violation or to recommend that any other federal or state agency take action against the defendant.

LITIGATION STATUS INFORMATION

The following is a list of new litigation involving the Commission, together with the date the suit was filed, the court involved, the docket number and a brief description of the major issue(s) involved in the case. Persons seeking additional information on a particular case should contact the court where the suit is filed or the Commission.

FEC v. James H. Dennis, Sr., U.S. District Court for the District of Columbia, Docket No. 80-1086, May 1, 1980.

> FEC alleges that James H. Dennis, Sr., violated the requirements of a conciliation agreement he entered into with the Commission pursuant to 2 U.S.C. §437g(a)(5) and (7) when he failed to pay $18,000 in civil penalties required by the agreement.

INFORMATION

COMMISSION APPROVES REVISED INVITATION POLICY

On May 1, 1980, the Commission approved a revised policy for accepting invitations to address public gatherings on campaign finance laws and the Commission itself. Under the revised policy (FEC Directive No. 30), Commissioners and staff may accept travel and subsistence payments from nonprofit organizations exempt from taxation under 26 U.S.C. §501(c)(3) or from the treasuries of state, county and municipal governments to attend meetings sponsored by these organizations.

FEC REPORTS TO CONGRESS ON 1979 FOIA ACTIVITIES

On April 10, 1980, the Commission submitted to Congress its annual report on activities performed in compliance with the Freedom of Information Act (FOIA). The report noted that the Commission processed 81 FOIA requests during 1979, a sharp increase over the 36 requests processed during 1978. Of these requests, only nine were denied while seven were partially filled. Of four FOIA appeals filed with the Commission, two were denied, one was partially granted and one was rendered moot.

The report also noted a problem area in processing FOIA requests. Specifically, the Commission is currently required to process FOIA requests for information already made available to the public through the FEC's statutorily mandated disclosure programs as well as other FEC information programs. To prevent this duplication of information services, and reduce research and copying costs incurred in filling FOIA requests, the report recommended amendments to the Freedom of Information Act which would exempt from its disclosure requirements documents already available to the public under other statutes or programs.

SELECTED BIBLIOGRAPHY OF CAMPAIGN FINANCE LAWS AVAILABLE

During May 1980, the FEC's Library issued a *Campaign Finance and Federal Elections Bibliography*. The *Bibliography*, which will be updated biannually, provides a selected, annotated compilation of publications issued from January 1977 through April 1980. Documents are listed according to four information categories:

Part I: Documents pertaining to the 1979 Amendments to the Federal Election Campaign Act (Pub. L. 96-187);
Part II: Books, monographs and treatises;
Part III: Manuals, guidebooks, reference services and search tools; and
Part IV: Law review articles and articles from business, political science and general periodical indexes.

Copies of the *Campaign Finance and Federal Elections Bibliography* are available for review and copying in the FEC's Public Records Office. Requests for the *Bibliography* should be accompanied by a money order or check for $.80, payable to the U.S. Treasury, and sent to the FEC's Public Records Office.

FEDERAL REGISTER NOTICES

Notice	Title	Federal Register Publication Date	Citation
1980-16	Rulemaking Petition; Notice of Availability (Requested by the Democratic National Committee and the Democratic Senatorial Campaign Committee to require specified notice on all solicitations for contributions by political committees conducting negative campaigns)	4/21/80	45 FR 26819
1980-17	11 CFR Part 110 Amendments to Federal Election Campaign Act of 1971; Correction (Reflects deletion of 11 CFR 110.7(b)(5) from the 1979 Amendments)	4/23/80	45 FR 27435
1980-18	11 CFR Part 4 Public Records and the Freedom of Information Act (Final rule)	5/13/80	45 FR 31291
1980-19	11 CFR Part 5 Access to Public Disclosure Division Documents (Final rule)	5/13/80	45 FR 31292
1980-20	11 CFR, Subchapter E, Parts 9001-9007, 9009 Presidential Election Campaign Fund: General Election Financing (Notice of proposed rulemaking)	5/15/80	45 FR 32003
1980-21	11 CFR, Parts 100 and 110 Contributions to and Expenditures by Delegates to National Nominating Conventions (Transmittal of regulations to Congress)	5/23/80	45 FR 34865

CLEARINGHOUSE

CLEARINGHOUSE CONDUCTS WORKSHOPS AT IIMC CONVENTION

The FEC's Clearinghouse on Election Administration recently conducted two workshops on federal election responsibilities in conjunction with the annual meeting of the International Institute of Municipal Clerks (IIMC) held May 21-22 in Toronto, Canada. Dr. Gary Greenhalgh, Director of the Clearinghouse and Assistant Staff Director for Information, led each of the following workshops with the assistance of three election administrators:

Workshop on Voting Systems and Equipment – discussed available voting systems and the new Voting Equipment Standards Study required by the 1979 Amendments to the Federal Election Campaign Act.

Workshop on Absentee Registration and Voting – focused on the mechanics of absentee voting with an emphasis on the Overseas Voting Rights Act and the special "Presidential ballot" section of the Voting Rights Act of 1975.

These workshops were also conducted at the Clearinghouse's five regional seminars held during 1979 and in January 1980.

AUDITS

AUDITS RELEASED TO THE PUBLIC

The Federal Election Campaign Act, as amended (the Act) requires candidates and political committees to file financial disclosure reports with the Commission. The Act also gives the Commission authority to audit campaigns of all Presidential candidates who receive public funds, and the reports of other political committees. Final audit reports are available to the press through the Press Office and to the general public through the Office of Public Records. The following is a chronological listing of audits released between April 10, 1980, and May 5, 1980:

Audit	Date Made Public
Independence Club Political Committee	4/10/80
Democratic Finance Committee	4/10/80
New York State Voter Registration Drive	4/10/80
California Dental Political Action Committee	4/10/80
Democratic Campaign Committee	5/5/80
Citizens for the Republic	5/5/80
McCarthy '76 CA	5/5/80

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REPORTS

REPORTS DUE IN JULY

Political committees listed below are required to file quarterly reports by July 15, monthly reports by July 20 or semiannual reports by July 31.

Who Reports in July

The following thresholds trigger registration and reporting requirements for political committees:

1. *Authorized candidate committees* (including principal campaign committees) register and report when the committees and/or the candidate that they support have together received contributions aggregating in excess of $5,000 for the election cycle **or** made expenditures and/or incurred debts in excess of $5,000 for the election cycle.
2. *Local party organizations* register as political committees and report when they have:
   - Received contributions aggregating in excess of $5,000 a year;
   - Spent more than $5,000 a year for certain payments that are exempt from the definitions of contribution and expenditure (2 U.S.C. §431(8)(B)(v), (x) and (xii));
   - Made expenditures aggregating in excess of $1,000 a year; **or**
   - Made contributions aggregating in excess of $1,000 a year.
3. *Separate segregated funds* (political action committees or PAC's) must register and report **regardless** of the amount of their financial activity.
4. *All other political committees* must register and report when they have received contributions aggregating in excess of $1,000 or made expenditures and/or incurred debts aggregating in excess of $1,000 per calendar year.

Who Need Not Report

The following persons are **not** required to file a report in July:

1. *Candidates.* As an agent of the campaign, the candidate must report to the principal campaign committee any personal financial activity related to the campaign.
2. *Committees authorized by individuals who are not candidates under the Act.* Authorized political committees which have not received contributions aggregating in excess of $5,000 for the election cycle **or** made expenditures and/or incurred debts aggregating in excess of $5,000 for the election cycle have no reporting obligations under the Act. Committees which fall below these thresholds should contact the FEC's Office of Public Communications for termination procedures. See below.)

When Reports Are Filed

Quarterly Reports. The treasurer of the political committee (other than monthly or semiannual filers, see below) must file a quarterly report by July 15 **regardless of the amount of funds received or expended by the committee** during the quarter. (FEC Form 3a, the postcard waiver, is no longer an acceptable filing.) The quarterly report must include all reportable transactions occurring since the last full report filed or (if the committee is new) from the date of registration through June 30, 1980.

Monthly Reports.

1. The treasurer of each principal campaign committee of a Presidential candidate which has received contributions or made expenditures aggregating $100,000 or more (or anticipates doing so) must file a monthly report by July 20. Note that, if a Presidential committee that has been filing on a quarterly basis receives contributions or makes expenditures aggregating in excess of $100,000, that committee must begin to file monthly reports in the next reporting period.
2. All committees **not** authorized by a candidate, which file on a monthly basis, must file their monthly report by July 20.

The reports of monthly filers must cover all transactions that occurred between June 1 and June 30, 1980.

Semiannual Reports. Committees authorized by candidates seeking election in a year other than 1980 (e.g., candidates seeking a U.S. Senate seat in 1982 or former candidates with campaign debts) are required to file a semiannual report by July 31. The report covers the period from January 1 through June 30, 1980, or (if the committee is new) from the date of inception through June 30. The treasurer must file the complete report, including all appropriate schedules, regardless of the amount of funds received or expended during the reporting period. (FEC Form 3a, the postcard waiver, is not an acceptable filing.)

continued

Y 3. EL 2/3:

Where Reports Are Filed

Political committees must file their reports with the appropriate federal and state offices. Correct filing procedures may be obtained by consulting the instructions on the back of the reporting forms (Form 3, 3P or 3X).

NOTE: Each authorized committee of a candidate must file its report with the principal campaign committee, which in turn must file a consolidated report on FEC Form 3Z with the appropriate offices.

Reporting Forms

Political committees must use the following forms, with appropriate schedules, to file their quarterly, monthly or semiannual reports:

1. *Form 3* must be used by all political committees authorized by a candidate for the House or Senate.
2. *Form 3P* must be used by Presidential campaigns.
3. *Form 3X* must be used by all political committees which are **not** authorized by a candidate.

A notice containing additional information, as well as forms, has been sent to all registered committees. Questions about the notice, or requests for forms, should be addressed to the Office of Public Communications, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463; or telephone 202/523-4068; toll free 800/424-9530.

FEC APPROVES REVISED REPORTING FORMS

On June 12, 1980, the Commission transmitted to Congress revised versions of FEC reporting Forms 4, 5 and 7. Revisions in the forms, highlighted below, eliminate reporting problems which occurred during the 1976 elections and reflect the 1979 Amendments to the Act:

FEC Form 4 (Convention Report Form) requires committees to categorize their receipts in more detail than in the past. For example, contributions received to defray convention expenses must now be reported separately from other types of receipts. The revised form also contains line-by-line reporting instructions and includes the schedules for itemizing receipts, disbursements, loans, and debts and obligations.

NOTE: Convention committees may file on either the old or the new Form 4 for the 1980 elections.

FEC Form 5 (Report of Independent Expenditures and Contributions Received) requires a person (other than a political committee) who makes an independent expenditure to report the expenditure (once it exceeds $250) and the receipt of any contribution (in excess of $200) to further an independent expenditure. The person making a contribution for an independent expenditure no longer has to report. The form also contains new line-by-line instructions.

FEC Form 7 (Report of Communication Costs) has been changed to incorporate the new reporting dates contained in the 1979 Amendments.

SPECIAL ELECTIONS IN MICHIGAN

Michigan has scheduled a special primary election for August 5 to fill the seat vacated by Congressman Charles C. Diggs, Jr., former Representative from the 13th Congressional District. A special general election will be held on November 4, 1980. (Note: These special elections will be held on the same dates as the regularly scheduled primary and general elections.) All individuals on the ballot in these special elections and their principal campaign committees will receive special notices from the FEC on their reporting requirements and filing dates. All other committees supporting candidates in the special elections should contact the Commission for information on required reports. Information may be obtained by calling toll free (800)424-9530 or 523-4068 in Washington, D.C.

FEC PUBLIC APPEARANCES

In keeping with its objective of making information available to the public, the Federal Election Commission regularly accepts invitations to address public gatherings on the subject of campaign finance laws and the Commission itself. This regular column lists scheduled Commission appearances, detailing the name of the sponsoring organization, the location of the event and the name of the Commission's speaker. For additional information on any scheduled appearance, please contact the **sponsoring organization.**

7/2	Washington Semester Program American University Washington, D.C. Vice Chairman John Warren McGarry
7/10	Election Seminar Hunter College New York, New York Vice Chairman John Warren McGarry
7/11	Robert A. Taft Institute of Politics Rhode Island College Providence, Rhode Island Commissioner Robert O. Tiernan

The RECORD *is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Max L. Friedersdorf, Chairman; John Warren McGarry, Vice Chairman; Joan D. Aikens; Thomas E. Harris; Frank P. Reiche; Robert O. Tiernan; J.S. Kimmitt, Secretary of the Senate, Ex Officio; Edmund L. Henshaw, Jr., Clerk of the House of Representatives, Ex Officio. For more information, call 202/523-4068 or toll-free 800/424-9530.*

REGULATIONS

DELEGATE SELECTION REGULATIONS SENT TO CONGRESS

On May 14, 1980, the Commission transmitted to Congress proposed regulations governing contributions to and expenditures by individuals seeking nomination as delegates to national nominating conventions (11 CFR Parts 100 and 110). These regulations address all levels of the delegate selection process, including the role of state and local party committees. They spell out reporting obligations as well as treatment of contributions and expenditures by delegates and delegate committees. Major provisions of these new regulations implementing the Act (2 U.S.C. §431 et seq.) are highlighted below.

Contributions to Delegates*

Contributions from Persons. Since a delegate does not seek nomination or election to federal office, he or she is **not** a "candidate" under the Act. Therefore, the reporting requirements and contribution limits (per candidate) of the Act do **not** apply to contributions made to promote an individual's selection as a delegate to a national nominating convention. 11 CFR 110.14(c). However, since the contributions to a delegate are made for the purpose of influencing a federal election (i.e., a national nominating convention or a primary election or caucus held to select delegates to a national convention), they would count against the individual contributor's aggregate contribution limit of $25,000 per calendar year. Moreover, contributions may not be made from sources prohibited under the Act (e.g., corporations or labor unions). 11 CFR 110.14(f).

Contributions from Presidential Campaign Committees. Contributions to a delegate by the campaign committee of a Presidential candidate, who has received matching funds, are chargeable to the Presidential candidate's spending limits. 11 CFR 110.14(c).

Expenditures by Delegates

Expenditures to Promote Candidacy Only. Expenditures by a delegate to promote **only** the individual's selection as a delegate are not limited or reportable. Nor would they be chargeable to a Presidential candidate's spending limits. Moreover, the regulations permit individuals to make these expenditures from their personal funds.

Example: An individual could spend any amount during the delegate selection process for communications advocating his/her selection or for travel and living expenses, including travel to the national nominating convention. These payments would not be reportable. 11 CFR 110.14(d).

Expenditures for Campaign Materials. Expenditures made by a delegate for certain campaign materials (e.g., pins, bumper stickers, handbills, brochures or yard signs) that advocate his or her selection and also refer to a Presidential candidate are not limited or reportable, as long as they are used only in connection with volunteer activities. These expenditures would not be considered contributions to the Presidential candidate or expenditures chargeable to the Presidential candidate's spending limits. 11 CFR 110.14(d).

Expenditures for Public Media. Payments made by a delegate for political advertising directed to the general public (e.g., communications in broadcast media, newspapers, magazines or direct mail) which advocates the individual's selection as a delegate and refers to a Presidential candidate are not limited or reportable unless they qualify as either a contribution in-kind to or an independent expenditure on behalf of the Presidential campaign. 11 CFR 110.14(d)(ii). Under these circumstances, expenditures for public media would be subject to the following provisions of the Act:

1. *An in-kind contribution to the Presidential candidate.* If an individual seeking selection as a delegate makes a media expenditure in consultation with the Presidential candidate or his/her campaign, that portion of the expenditure allocable to the Presidential candidate would be considered an in-kind contribution and would also count against the Presidential candidate's spending limits (if the candidate had received public funds). 11 CFR 110.14(d)(ii)(A)(1). The Presidential candidate would have the reporting responsibility.
2. *An independent expenditure on behalf of the Presidential candidate.* If the political advertising **expressly advocates** the election of a clearly identified candidate and is not prepared in consultation with the candidate or his/her campaign, that portion of media costs allocable to the Presidential candidate would be reportable as an independent expenditure by the individual seeking selection as a delegate, once the costs exceed $250. 11 CFR 110.14(d)(ii)(B).

Delegate Committees

If several persons, acting as a group, support the selection of delegate(s) by receiving contributions or making expenditures which exceed $1,000 a year, the group would become a political committee. This delegate committee would be subject to the standard registration and reporting requirements, contribution limits and prohibitions of the Act. 11 CFR 110.14(e).

Party Committees

Administrative expenses incurred by local, county, district or state party committees for sponsoring conventions or caucuses to select delegates are **not** reportable, but may not be paid with contributions which are prohibited under the Act. 11 CFR 110.14(g)(1).

Ballot fees paid to state or district party committees by individuals to qualify as delegate candidates are **not** contributions or expenditures under the Act. These payments are not subject to any spending limits and are not reportable. 11 CFR 110.14(g)(2).

These delegate selection regulations were published in the May 23, 1980, issue of the *Federal Register* (45 FR 34865). They will be promulgated 30 legislative days after their transmittal to Congress, provided neither the House nor the Senate disapproves them.

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*The term "delegate" includes both delegates **and** individuals seeking selection as delegates to national nominating conventions.

OPINIONS

ADVISORY OPINION REQUESTS

Advisory Opinion Requests (AOR's) pose questions on the application of the Act or Commission Regulations to specific factual situations described in the AOR. The following chart lists recent AOR's with a brief description of the subject matter, the date the requests were made public and the number of pages of each request. The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject	Date Made Public	No. of Pages
1980-61	Application of contribution and expenditure limits to independent expenditure committee for the Presidential general election.	5/19/80	3
1980-62	Solicitations by labor union's separate segregated fund.	5/20/80	3
1980-63	Costs of volunteer fundraising as reportable expenditure.	5/23/80	1
1980-64	Labor organization's payment of travel and living expenses for delegates to national convention.	5/27/80	8
1980-65	Trade association's solicitation of personnel of its corporate members.	5/28/80	3
1980-66	Voter registration activities conducted by nonprofit, unincorporated association.	5/29/80	8
1980-67	Solicitation notice for invitation to candidate reception; combined contributions by spouses on single check.	6/3/80	5
1980-68	Post-dated contributions for possible election.	6/3/80	1
1980-69	Contribution Direction Authorization form for labor union's separate segregated fund.	6/9/80	2
1980-70	Campaign materials purchased from independent expenditure committee.	6/10/80	6
1980-71	Solicitation notice for fundraising literature of corporate separate segregated fund.	6/10/80	5
1980-72	Political contribution plan administered by law firm for individual members.	6/10/80	4
1980-73	Presidential candidates' participation in senior citizen program funded by corporation.	6/13/80	4
1980-74	Deduction from vacation fund for labor union separate segregated fund.	6/16/80	4
1980-75	Trade association's solicitation of membership.	6/17/80	15

ALTERNATE DISPOSITION OF ADVISORY OPINION REQUESTS

– In response to **AOR 1980-15** (nonpartisan voter information announcements by corporation), the General Counsel informed the requester in a letter issued June 6, 1980, that the Commission had failed to approve an advisory opinion by the requisite four-vote majority.

– AOR 1980-52 was withdrawn by its requester on May 28, 1980.

ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR's. Any qualified person who has requested an AO and acts in accordance with the opinion will not be subject to any sanctions under the Act. Other persons may rely on the opinion if they are involved in a specific activity which is indistinguishable in all material aspects from the activity discussed in the AO. Those seeking guidance for their own activity, however, should consult the full text of an AO and not rely only on the summary given here.

AO 1979-69: Trade Association's Solicitation of Associate Members

The Alaska Loggers Association/Clarence Kramer Political Action Committee (ALA/PAC), the separate segregated fund of the Alaska Loggers' Association, Inc. (ALA), may not solicit "associate members" of ALA.

While the Act and Commission Regulations permit a trade association, or its separate segregated fund, to solicit contributions to the fund from its **members**, ALA's associate members do not meet the criteria for membership. 11 CFR 114.1(e). Specifically, an incorporated membership organization without capital stock may only solicit "members" or those persons who have interests and rights in the organization, who assume some right to participate in the organization's direction, and who have an obligation to help sustain the organization through regular financial contributions. Since ALA's bylaws specifically state that its associate members do "not have the right to vote at any meeting or have any voice in ALA or any control over its officers," the associate members are not, therefore, "members" of ALA as defined by 11 CFR 114.1(e). (Date Issued: May 13, 1980; Length: 3 pages)

AO 1980-30: Conversion of 1980 Campaign Committee Into 1982 Campaign Committee

Excess campaign funds from Frank Askin's 1980 Congressional campaign may be used for any lawful purpose, but may not be converted to personal use. 2 U.S.C. §439a. Mr. Askin, previously registered as a House candidate seeking nomination in New Jersey's June 3 primary, ceased to be a candidate for that election on March 10, 1980. On that date, he amended his Statement of Candidacy, redesignating his 1980 campaign committee as the principal campaign committee for his 1982 election. Assuming that there were no outstanding debts or obligations from Mr. Askin's 1980 primary campaign, the funds remaining from the 1980 campaign may be used for:

1. Making pro rata refunds to contributors to the 1980 campaign; and

2. Supporting the candidate's nomination in the 1982 primary election.

The 1982 campaign committee must, however, report refunds of contributions. 11 CFR 104.3(b)(2)(v)(A) and (B).

Undesignated contributions received between March 10 (the date on which Mr. Askin ceased to be a candidate for the 1980 election and became a candidate for the 1982 election) and the 1982 primary count toward his 1982 primary election. A contributor to his 1980 campaign (prior to March 10, 1980) may also contribute to his 1982 primary election. A separate contribution limit applies to each election.

Because Mr. Askin is now a candidate only for an election in 1982, his committee must file semiannual reports, required during a nonelection year, rather than quarterly reports, required during election years. 11 CFR 104.5(a). The committee must identify (on Schedule A) each person contributing in excess of $200 during 1980, regardless of whether the contributions were for the 1980 or 1982 election. The report should include a notation, however, indicating the election for which the contribution was intended.

Expenses paid by the campaign committee for publishing and distributing a newsletter promoting Mr. Askin's candidacy as a delegate to the Democratic National Convention must be reported by the committee. 2 U.S.C. §434. Since a reference to Senator Edward Kennedy (to whom the candidate had pledged his support) was not made in consultation with the Senator or any of his authorized committees or agents, the committee does not have to report a portion of the newsletter expenses as an in-kind contribution to Senator Kennedy. Nor are the expenses chargeable to Senator Kennedy's expenditure limit. 2 U.S.C. §441a(b).

If Mr. Askin's Congressional district is redesignated as a result of redistricting, the 1982 campaign committee must amend its Statement of Organization (FEC Form 1) to reflect the change. Commissioner Frank P. Reiche filed a concurring opinion. (Date Issued: May 30, 1980; Length: 9 pages, including concurring opinion.)

AO 1980-32: Use of Excess Campaign Funds to Retire Campaign Debts

The Dannemeyer for Congress Committee (the Committee) may use excess campaign funds raised in 1979 to retire debts of the candidate's 1978 campaign for Congress and his 1976 campaign for state assembly, if permitted by state law.

Since the Committee's 1979 fundraising occurred after it had begun to engage in financial activity for Mr. Dannemeyer's 1980 Congressional campaign, and since the Committee was not specific as to the proposed use of the funds raised, the funds received in 1979 count as contributions to his 1980 election. The Act and Commission Regulations permit political committees to use excess campaign funds for a variety of specified purposes and for "any other lawful purpose." 2 U.S.C. §439a; 11 CFR 113.2. The Committee's use of 1980 excess campaign funds to retire debts of previous campaigns is considered a "lawful purpose." Commissioners Thomas E. Harris and Frank P. Reiche filed a dissenting opinion. (Date Issued: May 21, 1980; Length: 5 pages, including dissenting opinion.)

AO 1980-34: Artwork Donated to (and Sold by) Political Committee

Volunteer services supplied by artists in creating artwork for the Connally for President Committee (the Committee) would not constitute a contribution to the Committee, as long as the Committee reimburses the artists for the costs of artwork materials. However, the full purchase price of each artwork, when later sold by the committee, would constitute a contribution to the Committee by the purchaser and would be subject to the Act's limits and prohibitions on contributions. 2 U.S.C. §§441a, 441b, 441c and 441e.

The sale of the artwork by an art dealer would constitute a political fundraising activity (rather than a commercial transaction) since revenue from the sale of the artwork would be transmitted to, and used by, the Committee to retire its campaign debts. Accordingly, the Committee would have to instruct the art dealer to:

- Identify each artwork as part of the Connally Committee collection; and
- Advise potential buyers that the proceeds from the sale of the artwork count as a contribution to the Committee.

Further, all the Committee's financial transactions related to the sale of the artwork, reimbursements to the artists for basic materials used to create the artwork, and the commission paid to the art dealer would have to be reported by the Committee as expenditures, according to the provisions of 2 U.S.C. §434.

The Commission expressed no opinion on the possible application of tax laws to the artwork sales since those issues are not within its jurisdiction. Commissioner Frank P. Reiche filed a dissenting opinion. (Date Issued: May 23, 1980; Length: 7 pages including dissenting opinion.)

AO 1980-37: Contributions from Government Contractor

The Stenholm for Congress Committee (the Committee) must refund contributions received from a government contractor and disclose the refund in its next report.

The contributions must be returned because the contributor, the sole proprietor of a trucking business involved in four contracts with the U.S. Postal Service, is specifically prohibited by the Act and Commission Regulations from making contributions or expenditures to influence federal elections from business, personal or other funds under his control. 11 CFR 115.5. (Date Issued: May 23, 1980; Length: 2 pages)

AO 1980-38: Allocation of Computer-Use Expenses Between State and Federal Committee

An agreement to allocate computer rental and data entry costs between the Allen for Congress Committee (the Federal Committee) and the campaign committee of a Michigan legislative candidate (the State Committee) is permitted by Commission Regulations provided that the committees allocate costs in a manner that reflects the actual use and benefit to each campaign. 11 CFR 106.1 and 110.8(d)(3).

continued

Under the agreement, the two campaign committees would evenly divide computer costs for data entry of voter information in areas where their legislative and Congressional districts overlap. Each campaign committee would then absorb all costs of data entry and rental in areas that do not overlap. To ease bookkeeping requirements, the Federal Committee has paid all data entry costs and the State Committee has paid a security deposit and rental for the use of the computer. Each committee plans to reimburse the other for those costs assignable to it. The computer costs would be reported as follows:

Payments by the Federal Committee

Since the Federal Committee's payments for data entry of voter information are not for the purpose of influencing the state candidate's election, but rather for the purpose of influencing Mr. Allen's reelection, the Federal Committee must report the data entry costs as **operating expenditures.** 11 CFR 104.3(b)(2)(i).

Reimbursements by the State Committee to the Federal Committee

Reimbursements to the Federal Committee by the State Committee for its share of the data entry costs must be reported by the Federal Committee as **receipts** in the form of offsets to operating expenditures. 11 CFR 104.3(a)(3)(ix)(A), (B) and (C). Since payments to the Federal Committee must be from funds permissible under the Act, and since the State Committee is not a political committee under the Act, the State Committee must establish one of the following accounting procedures if it accepts funds prohibited by the Act:

1. Establish a separate account for funds permissible under the Act and from which payments to the Federal Committee would be made; or
2. Demonstrate through a reasonable accounting method that, whenever such payments are made, the State Committee has received sufficient funds permissible under the Act to make payments to the Federal Committee.

In addition, the State Committee must keep records, which it will make available to the Commission upon request. 11 CFR 102.5(b)(1)(i) and (ii) and 100.7(a)(1)(i)(D).

Federal Committee's Obligations to the State Committee

The Federal Committee's obligations to the State Committee for its outstanding share of the computer rental and security deposit are expenditures by the Federal Committee. 11 CFR 100.8(a)(2). **If the committees' agreement was in writing,** the Federal Committee must report its obligations as of the date the agreement was made. **If the agreement was not in writing,** the Federal Committee must report the obligation and actual payments according to 11 CFR 104.11.

The Commission expressed no opinion on the application of Michigan law to the Federal Committee's payments to the State Committee. This opinion supersedes Advisory Opinions 1976-110 and 1978-67 with respect to payments from political organizations that are not "political committees" under the Act. (Date Issued: May 16, 1980: Length: 4 pages)

AO 1980-39: Investment of Funds in Money Market Fund

The Fluor Public Affairs Committee (Fluor-PAC), the separate segregated fund of the Fluor Corporation, may invest its campaign funds in a professionally managed money market fund (11 CFR 103.3), provided Fluor-PAC returns campaign funds invested in the money market fund to its campaign depository **before** the funds are used to make expenditures.

Although Fluor-PAC need not file an amended Statement of Organization designating the money market fund as an additional campaign depository, Fluor-PAC must fulfill the following reporting requirements:

1. Total campaign funds invested in the money market fund must be included in the total amount of funds reported by the committee as "cash-on-hand." 11 CFR 104.3(a)(1).
2. Fluor-PAC must report as a receipt any income earned on its investment. 2 U.S.C. §434(b)(2)(J) and (b)(3)(G). (Date Issued: May 16, 1980; Length: 3 pages)

AO 1980-40: Multicandidate Committee Status for Affiliated Committees

The Transamerica Corporation Political Action Committee (TRANSPAC) and its affiliated separate segregated fund, Occidental Life Insurance Company of California Political Action Committee (OXY-PAC), may qualify as multicandidate committees once they have collectively satisfied the Act's requirements for multicandidate committee status. 2 U.S.C. §441a(a)(4). Together, that is, they must have been registered for at least six months, must have received contributions from more than 50 donors and contributed to at least five federal candidates.

As affiliated committees, TRANSPAC and OXY-PAC are subject to a single contribution limit with regard to both contributions received and contributions made. 2 U.S.C. §431(4)(B) and §441a(a)(5). (Date Issued: June 9, 1980; Length: 3 pages)

AO 1980-41: Use of Candidate's Excess Campaign Funds After His Death

Excess campaign funds and assets of the Slack for Congress Committee, the principal campaign committee of the late Congressman John M. Slack, Jr., may be transferred to his family or his office staff.

Under the 1979 Amendments to the Act, candidates who were not members of Congress on the day the 1979 Amendments were enacted into law (January 8, 1980) may not use excess campaign funds for personal use. 2 U.S.C. §439a; 11 CFR 113.2. Since, however, Mr. Slack was a member of Congress at that time, the proposed use of the funds would be permissible, provided West Virginia state law does not make the proposed transfer unlawful. (Date Issued: May 16, 1980; Length: 2 pages)

AO 1980-43: Reporting 1974 Debts by 1980 Committee

Martin Frost, a candidate for reelection to the House of Representatives in 1980, may report outstanding debts of his 1974 Congressional campaign by either one of the following methods approved by the Commission:

1. Congressman Frost's 1980 campaign committee may consolidate the 1974 campaign debts with activities reported by the 1980 campaign committee. The 1980 committee would use separate contribution schedules (Schedule A's) to identify contributions received to retire the 1974 debt and contributions received for the 1980 campaign. In addition, the committee would file a separate debt schedule (Schedule C) identifying the 1974 debts until they are retired.
2. Alternatively, Congressman Frost may continue to file separate, semiannual reports as a 1974 candidate until the debts for that election are extinguished. The 1980 Committee would continue to file quarterly. 11 CFR 104.3(d), 104.5(a)(2) and 104.11; and 2 U.S.C. §434(a)(2)(B). (Date Issued: May 23, 1980; Length: 2 pages)

AO 1980-45: Nonprofit Organization's Nonpartisan Voter Registration Drive

Planned Parenthood of New York City, Inc. (PPNYC), a nonprofit corporation, may conduct nonpartisan voter registration drives for the general public at its clinics. Commission regulations specifically permit corporations and labor organizations to support such nonpartisan voter registration drives for the general public as long as these activities are jointly sponsored with a nonpartisan, nonprofit civic group and are conducted by the civic group. 11 CFR 114.14(d). Although this regulation does not specifically address PPNYC's situation, where the qualified civic group unilaterally undertakes a voter registration drive without a corporate co-sponsor, the regulation does not require a civic group to find a corporate co-sponsor for an otherwise permissible activity. Commissioner Robert O. Tiernan will file a dissenting opinion. (Date Issued: June 11, 1980; Length: 2 pages)

AO 1980-47: Preemption of State Law Regulating Election Day Services

The Federal Election Campaign Act (the Act) does not supersede or preempt a Maryland law that would prohibit the Conroy for U.S. Senate Committee from making payments for "walk around services" performed on election day. The Maryland law defines payments for "walk around services" to include the following activities which the Conroy for U.S. Senate Committee proposed to undertake: payments to campaign workers engaged in distributing campaign literature, sample ballots, or other campaign material; serving as poll watchers; and other campaign activities performed on the day of the election. (Date Issued: May 13, 1980; Length: 3 pages)

AO 1980-48: Cooperative's Solicitation of Corporate Members' Stockholders

A separate segregated fund proposed by the Mid-States Distributing Company (Mid-States), an incorporated cooperative association, may not solicit contributions from the shareholders of its corporate members. Commission Regulations define solicitable members as "all persons who are currently satisfying requirements for membership in a cooperative." 11 CFR 114.1(e). In this case, a direct membership relation does not exist between Mid-States and the shareholders of its corporate members. Mid-States could, however, solicit its own individual members. (Date Issued: June 9, 1980; Length: 3 pages)

AO 1980-49: Use of Campaign Funds for Personal Living Expenses

Steven D. Weinstein, a Congressional candidate, may use campaign funds for ordinary and necessary living expenses incurred during the 1980 campaign. The ban on coverting "excess campaign funds" to personal use, contained in the 1979 Amendments to the Act (2 U.S.C. §439a), does not affect the candidate's use of campaign funds for campaign purposes during the course of the campaign. (Date Issued: May 16, 1980; Length: 2 pages)

AO 1980-60: Contributions Accepted by Campaign Committee for Two Separate Elections

The Galperin for Congress Committee (the Committee) may accept contributions for both a nominating convention, held on April 26, 1980, to select candidates for a June 3 special general election in West Virginia, and for a regular Congressional primary election (also held on June 3). Since the nominating convention and the Congressional primary are separate elections, separate limits would apply to contributions received for these elections. 2 U.S.C. §441a(a)(6); 11 CFR 110.1(j)(1) and 110.2(d)(1). However, contributions accepted by the Committee for the nominating convention must have been received on or before April 26. Contributions received after April 26 would count as contributions for the June 3 primary election (11 CFR 110.1(a)(2)(ii)), **unless** the contributions are specifically designated for the convention and do not exceed the Committee's outstanding debts for the convention. (Date Issued: May 30, 1980; Length: 3 pages)

PUBLIC FINANCING

FEC DENIES LAROUCHE REQUEST TO REESTABLISH MATCHING FUNDS ELIGIBILITY

On May 28, 1980, the Commission denied a request submitted by the principal campaign committee of Lyndon LaRouche to reestablish Mr. LaRouche's eligibility for primary matching funds.* (Mr. LaRouche had become ineligible for funds on April 17, 1980, when he failed to receive 10 percent of total votes cast in two consecutive primaries.) The Commission also voted to grant a one-week postponement of its audit of the LaRouche Committee originally scheduled for June 2, 1980, until June 9, 1980.

The Commission found that Mr. LaRouche had not reestablished his eligibility because he had not received 20 percent of the total votes cast in the Democratic Presidential primary election held in Michigan on May 20, 1980. 11 CFR 9033.7(b). The Commission also questioned whether the Michigan Primary constituted an "election," as defined by the Presidential Primary Matching Payment Account Act (26 U.S.C. §9032(7)), since the Michigan law establishing this election had been ruled unconstitutional by a federal district court.

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*Ineligible candidates may continue to receive primary matching funds to retire outstanding campaign debts incurred **before** the date of ineligibility, provided certain requirements are met. See Commission Regulations at 11 CFR 9034.1.

THE LAW IN THE COURTS

LITIGATION STATUS INFORMATION

The following is a list of new litigation involving the Commission, together with the date the suit was filed, the Court involved, the Docket Number and a brief description of the major issue(s) involved in the case. Persons seeking additional information on a particular case should contact the Court where the suit is filed or the Commission.

FEC v. Louis R. Lee, U.S. District Court for the Eastern District of Michigan, Southern District-Detroit, Docket No. 80-71556, May 8, 1980.

> FEC seeks declaratory and injunctive relief against Louis R. Lee for violating the terms of a conciliation agreement he had entered into with the Commission. Mr. Lee violated the agreement by failing to pay a $10,000 civil penalty required by the agreement.

COMPLIANCE

SUMMARY OF MUR's

Selected compliance cases, which have been closed and put on the public record, are summarized in the *Record*. Compliance matters stem from possible violations of the Federal Election Campaign Act of 1971, as amended, which come to the Commission's attention either through formal complaints originating outside the Commission or by the FEC's own monitoring procedures. The Act gives the FEC the exclusive jurisdiction for the civil enforcement of the Act. Potential violations are assigned case numbers by the Office of General Counsel and become "Matters Under Review" (MUR's). All MUR investigations are kept confidential by the Commission, as required by the Act.

MUR's may be closed at any one of several points during the enforcement process, including when the Commission:

- Determines that no violation of the Act has occurred;
- Determines that there is no reason to believe or no probable cause to believe a violation of the Act has occurred;
- Enters into a conciliation agreement with the respondent;
- Finds probable cause to believe a violation has occurred and decides to sue; or
- Decides at any point during the enforcement process to take no further action.

After the MUR is closed and released by the Office of General Counsel, the Commission makes the MUR file available to the public. This file contains the complaint, the findings of the General Counsel's Office and the Commission's actions with regard to the case, including the full text of any conciliation agreement. The Commission's actions are not necessarily based on, or in agreement with, the General Counsel's analysis.

Selection of MUR's for summary is made only from MUR's closed after January 1, 1979. The *Record* article does not summarize every stage in the compliance process. Rather, the summary provides only enough background to make clear the Commission's final determination. The full text of these MUR's and others which were closed between 1976 and the present are available for review and purchase in the Commission's Public Records Office.

MUR 454: Extension of Credit

On March 1, 1979, the Commission determined that there was no reason to believe a corporation's extension of credit to a political committee had violated the Act or Commission Regulations.

Complaint: The Reports Analysis Division referred this matter to the General Counsel after a routine analysis indicated that a committee might have settled a debt with a fundraiser in a manner that violated 11 CFR 114.10(a). In its 30-day post-general election report, the committee had an outstanding debt of approximately $41,000 to its fundraiser and the fundraiser's direct mail subcontractors. The committee noted that the firms to which it still owed money had agreed to do subsequent solicitation mailings until the committee had raised enough money to liquidate its debts to them. When the committee filed its next quarterly report, all debts had been paid in full.

General Counsel Reports: The committee's contract with its fundraiser provided that the fundraiser would furnish consulting and computer services and conduct direct mail campaigns for the client committee. Between July and September, 1977, the fundraiser provided the committee with services totaling $73,094. During that period, the committee paid the fundraiser $32,067. After the fundraiser had completed its work for the committee, the committee disputed the amount it owed to the fundraiser. To retire the committee's debt (approximately $41,000), the fundraiser accepted the responsibility for raising sufficient funds to satisfy the committee's debt to the fundraiser and its subcontractors.

The General Counsel pointed out that, since the committee subsequently paid all its debts in full, there did not appear to have been a "debt settlement,' as defined by 11 CFR 114.10(b). However, since the fundraiser and its subcontractors had extended $41,000 in credit to the committee, possibly there had been an extension of credit beyond the ordinary course of the corporation's business, in violation of 11 CFR 114.10(a).

Further investigation revealed that, upon discovery of the committee's unwillingness or inability to pay its debts, the fundraiser had secured partial payment and promissory notes for the committee's remaining obligations. Therefore, the General Counsel concluded that, in an attempt to secure payment, the fundraiser had extended credit to the client committee.

The General Counsel distinguished this situation from other forms of corporate credit because the committee's creditor was also the committee's fundraiser. Given that situation, the General Counsel maintained that it would be unreasonable for the creditor to take his client to court since the client would ultimately be dependent upon the creditor's services as a fundraiser to satisfy the debt. Therefore, although the contract was unusual, its execution by the creditor seemed commercially reasonable. The contract was entered into in July 1977, and the services were performed during August of the same year. In that period, the fundraiser collected nearly one-half of the total amount due, and all debts were fully paid by March 31, 1978. Since the credit terms were commercially reasonable in this situation, the General Counsel recommended that the Commission find no reason to believe a violation of the Act had occurred.

Commission Determination: On March 1, 1979, the Commission determined that there was no reason to believe a violation of the Act had occurred.

MUR 737: Candidate's Personal Funds

On March 14, 1979, the Commission entered into a conciliation agreement with an individual who had made an excessive contribution, in violation of 2 U.S.C. §441a(a)(1)(A). On April 2, 1979, the Commission entered into a conciliation agreement with the committee which had knowingly accepted the excessive contribution, in violation of 2 U.S.C. §441a(f).

Complaint: During the course of a routine report analysis, it was discovered that an individual had contributed $20,500 to a Federal candidate's campaign committee. The contribution was made in the form of three separate loans, and each was designated for the primary election. The committee's post-primary report explained that the excessive $19,500 had been refunded. In response to an inquiry from the Commission, the candidate identified herself as the source of funds for the contribution refund. On October 23, 1978, the Commission found reason to believe that the individual had violated §441a(a)(1)(A) by making the excessive contribution and that the committee had violated §441a(f) by knowingly accepting the excessive contribution.

General Counsel Reports: During the course of the ensuing investigation, the lender stated that the loans were made to the candidate, who is his daughter, rather than to the committee. He described the funds as personal loans rather than campaign contributions and stated that the funds were initially deposited in the candidate's personal account. (The individual did not submit any evidence of the intermediate transaction between himself and the candidate.) However, regardless of how the father attempted to characterize the loans, the General Counsel pointed out that the funds in question would not meet the "personal funds" definition in Commission Regulations (11 CFR 110.10(b)) because:

- The first loan from the individual was used, according to the committee treasurer, to open the committee's account;
- The balance of the loan was made after the individual's daughter became a candidate; and
- The committee reports identify the individual rather than the candidate as the source of the loans to the committee.

The General Counsel concluded that the funds must, therefore, be considered contributions from the father, in violation of §441a(a)(1)(A). Furthermore, although the candidate notified the Commission that she was the source of the loan repayment, that information did not satisfy the Act's reporting requirement that a committee disclose the "circumstances and conditions under which" loans are extinguished. Therefore, the General Counsel recommended that the Commission find reason to believe that the committee had also violated 2 U.S.C. §434(b)(8) as amended in 1979.

Commission Determination: On January 31, 1979, the Commission found reason to believe that the committee had violated §434(b)(8), reasonable cause to believe that it had violated §441a(f) and reasonable cause to believe that the individual had violated §441a(a)(1)(A). On March 14, 1979, the Commission entered into a conciliation agreement with the individual. The committee amended its reports to reflect the details of the loan repayment, as required by §434(b)(8), prior to entering into a conciliation agreement with the Commission on April 2, 1979. Civil penalties were levied on both the individual contributor and the committee.

FEC PUBLISHES NAME OF NONFILER

On June 5, 1980, the Federal Election Commission published the name of a Presidential candidate's principal campaign committee, which had failed to file a monthly report by April 20, 1980. Under the 1979 Amendments to the election law, the campaigns of Presidential candidates which raised or spent more than $100,000 by January 1, 1980, must file monthly financial disclosure reports during the election year. Each report is due on the 20th of the month, covering the previous month's financial activity.

New Commission procedures call for each Presidential campaign committee over the $100,000 level to be notified by mailgram five business days after the due date of the report if the report has not been received. Failure to respond to the notice within four additional business days results in publication of the committee's name.

COMMISSIONERS

COMMISSIONER TIERNAN ACCEPTS ABA APPOINTMENT

Commissioner Robert O. Tiernan has accepted an appointment as a member of the American Bar Association's (ABA's) Advisory Commission to the Special Committee on Election Law and Voter Participation. The appointment, which was made by ABA President-elect William Reece Smith, Jr., of Chicago, will be for a one-year term starting in August. An original member of the Commission appointed in 1975, Commissioner Tiernan was reappointed in May 1976 by President Ford and served as Chairman in 1979-80. His term expires on April 30, 1981.

800 LINE

The Office of Public Communications receives numerous inquiries from the public on its toll-free line: 800/424-9530. The following explanation responds to a frequently asked question.

Name of Separate Segregated Fund

Question: May a separate segregated fund (a political action committee or PAC) continue to use the acronym by which it is widely known – even if the acronym excludes the name of the fund's connected organization?

Answer: The name of a separate segregated fund must include the full name of its connected organization. 11 CFR 102.14. On checks and letterhead, however, the fund may use an abbreviation or acronym, as long as the abbreviated title makes clear who actually sponsors the separate segregated fund. Both the full name and the abbreviation or acronym must be included on the fund's Statement of Organization (Form 1), on all reports filed by the fund, and in all notices that appear on advertisements or solicitations. If the current Statement of Organization does not reflect these names, then the separate segregated fund must amend the Statement accordingly.

Example: While United Telecom Political Action Committee, the separate segregated fund of United Telecommunications, Inc., must change its official name to "United Telecommunications, Inc., Political Action Committee," the fund may continue to use its abbreviated title, "United Telecom Political Action Committee," on committee letterhead and checks since this title clearly identifies the fund's connected organization. (See AO 1980-10, May 1980 *Record*; see also AO 1980-23, June 1980 *Record*.)

CLEARINGHOUSE

CLEARINGHOUSE RELEASES BILINGUAL STUDY

During May 1980, the Clearinghouse released Volume II of *The Bilingual Elections Services Study*, a multiyear study of bilingual election practices. The *Study*, conducted by the University of New Mexico under contract with the FEC's Clearinghouse, analyzes the problems encountered in providing bilingual voter services in more than 300 local jurisdictions in some 30 different States. The purpose of the *Study* is to provide State and local election officials with a handbook of ideas and suggestions for improving bilingual registration and election services. The three-volume study includes:

- *Volume I: A Handbook of Ideas for Local Election Officials* suggests techniques for identifying language minority populations and defines the types of election services most appropriate to their needs; and reviews different ideas and approaches for designing bilingual registration programs and for providing bilingual services at polling places. (This volume was released in September 1979.)
- *Volume II: A Glossary of Common Spanish Election Terminology.*
- *Volume III: The State of the Art* summarizes a two-year analysis of how election officials throughout the country have identified their language minority populations and defined their needs, as well as how bilingual registration and balloting services have been provided to date. (This volume was released in September 1979.)

Volume II of *The Bilingual Elections Services Study* is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20404. Identify report title and GPO stock number (052-006-00007-4). Enclose a check or money order for report price ($3.50) payable to Superintendent of Documents.

Volumes I and III of *The Bilingual Elections Services Study* are available from the National Technical Information Service, U.S. Dept. of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Identify report numbers (Vol. I, No. PB300432AS, $7.00; Vol. III, No. PB300433AS, $11.00) and enclose a check or money order payable to National Technical Information Service.

SUBSCRIPTIONS TO ELECTION LAW UPDATES AND ELECTION CASE LAW SERIES

The following subscriptions are available from the FEC's Clearinghouse:

- *Election Law Updates.* This quarterly series includes a synopsis of all key federal and state election laws, a comprehensive index to aid in research and an annual cumulative summary. Subscription price: $11.00 a year.
- *Election Case Law.* This quarterly series is similar in design and concept to the *Election Law Updates.* All federal and state election cases are summarized and indexed. Subscription price: $10.00 a year.

Please do **not** send checks or money orders to the Commission. For information on how to subscribe, please write: Clearinghouse – FEC, 1325 K Street, N.W., Washington, D.C. 20463; or call 202/523-4183 locally or toll-free 800/424-9530.

PUBLICATIONS

ANNUAL REPORT

On June 1, 1980, the Commission submitted its *Annual Report 1979* to the President and the Congress. The *Report* details the Commission's efforts to facilitate smooth administration of public financing in the 1980 Presidential elections while improving overall administration of the election law. The *Report* describes, for example, procedures developed to expand the scope of information available on Presidential campaign finance activity; ensure swift certification of public funds; and undertake timely, thorough audits of candidates and national nominating conventions receiving public funds. It highlights revised regulations governing the public funding of Presidential primary campaigns and national nominating conventions, as well as advisory opinions issued on Presidential election activity.

A separate chapter of the *Report* highlights major changes in the law resulting from passage of the 1979 Amendments to the Act. (A similar summary was published as a Supplement to the *Record* in March 1980.)

During 1979, the Commission's internal administration changed as a result of a collective bargaining agreement negotiated between FEC management and representatives of the National Treasury Employees Union. The *Report* discusses this labor/management issue as well as other aspects of the FEC's internal administration.

Finally, the *Report* contains the Commission's legislative recommendations. Several appendices contain supplemental information on the Commission and its activities. An appendix on advisory opinions, for example, summarizes all Commission advisory opinions issued in 1979.

The FEC's *Annual Report 1979* is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; telephone: 202-275-2091. The order number is 052-006-00006-6. Purchase price, payable in advance to the Superintendent of Documents, is $4.25.

CHANGE OF ADDRESS

Political Committees

Registered political committees are automatically sent the *Record*. Any change of address by a registered committee must, by law, be made in writing as an amendment to FEC Form 1 (Statement of Organization) and filed with the Clerk of the House, the Secretary of the Senate or the FEC, as appropriate.

Other Subscribers

Record subscribers (who are not political committees), when calling or mailing in a change of address, are asked to provide the following information:

1. Name of person to whom the *Record* is sent.
2. Old address.
3. New address.
4. Subscription number. The subscription number is located in the upper left hand corner of the mailing label. It consists of three letters and five numbers. Without this number, there is no guarantee that your subscription can be located on the computer.

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THE FEDERAL ELECTION COMMISSION

RECORD

1325 K Street N.W., Washington, D.C. 20463

Volume 6, Number 8

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1980 EDITION OF COMMISSION REGULATIONS RELEASED

A copy of the 1980 edition of the Commission's Regulations has been sent, as an attachment to this month's *Record,* to all political committees currently registered with the Commission. The volume includes revisions prescribed by the Commission on April 1, 1980, implementing the 1979 Amendments to the Federal Election Campaign Act (Parts 100-115); and revisions to the Convention Financing Regulations (Part 9008) and the Primary Election Financing Regulations (Parts 9031-9038). Additional copies of the 1980 edition of Commission Regulations are available to the public free of charge by contacting: Office of Public Communications, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463; or call 202/523-4068 or toll free 800/424-9530.

Starting this month, the *Record* will regularly publish a chart indicating the status of regulations proposed by the Commission after the publication of the 1980 Regulations. See Page 3.

REGULATIONS

FEC PRESCRIBES REGULATIONS GOVERNING SUSPENSION OF MATCHING FUNDS

On July 3, 1980, the Commission prescribed revised regulations governing the suspension of primary matching fund payments to Presidential primary candidates. Under the revised regulations, the Commission may suspend matching fund payments to a candidate only if he or she knowingly, willfully and **substantially** exceeds the spending limits for matching fund recipients. Moreover, a Presidential candidate who exceeds the spending limits will **not** be permitted to reestablish matching fund eligibility after matching payments have been suspended.

These Regulations, which affect provisions of 11 CFR 9033.9, were published in the *Federal Register* on April 15, 1980 (45 FR 25378).

GENERAL ELECTION REGULATIONS SENT TO CONGRESS

On June 13, 1980, the Commission transmitted to Congress revised regulations governing the public financing of Presidential general election campaigns. The revised regulations contain refinements based on the Commission's experience in administering the public funding of the 1976 general election. They also reflect the 1979 Amendments to the Act. These general election regulations have been renumbered to conform with the section of the U.S. Code on which they are based (26 U.S.C. §9001, *et seq.*). Technical conforming amendments have also been made to Commission Regulations at 11 CFR Parts 100, 106 and 110. The following paragraphs highlight the major modifications. Readers should not, therefore, rely solely on this summary. Instead, they should consult the full text of 11 CFR Parts 100, 106, 110, 140-146 and 9001-9007.

Candidate Eligibility

Deadlines for candidate agreements and certifications. 11 CFR 9003.1(b). Major party candidates must sign and submit a letter of agreement and written certifications* to the Commission within 14 days after receiving their party's Presidential nomination.

Minor and new party candidates must submit a letter of agreement and written certifications within 14 days after qualifying for the ballot in 10 states. Minor and new party candidates may, however, request an extension of this deadline.

Candidate's withdrawal from the campaign. When an indi-

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*In the letter of agreement, the candidate must agree to furnish records of campaign expenses, permit the conduct of an audit, identify the person authorized to receive payments on his/her behalf and designate a campaign depository. 11 CFR 9003.1. In the written certifications, the candidate must certify that he or she will comply with the spending limits, limits on use of contributions and personal spending limits. 11 CFR 9003.2.

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vidual ceases to be a Presidential candidate,* he/she must submit a written statement to the Commission within 60 days indicating: campaign debts, cash-on-hand, estimated winding-down costs, the value of any capital assets, and debts owed to the campaign. 11 CFR 9004.8.

Personal Funds

The candidate may spend personal funds of up to $50,000 for any qualified campaign expenditures. In addition to the candidate's personal assets and salary, "personal funds" may include funds of the immediate family over which the candidate had legal title or to which, under state law, the candidate had the right of beneficial enjoyment at the time he/she became a candidate. 11 CFR 9003.4(c)(3). When a family member contributes funds which the candidate does not control, the funds are considered contributions subject to the $1,000 limit. They do not count against the $50,000 limit on personal funds.

Legal and Accounting Fund

Contributions to a Legal and Accounting Compliance Fund. 11 CFR 9003.3(a)(1). Federally funded candidates may accept **private contributions** for a legal and accounting compliance fund. Contributions to the fund, which are subject to the Act's $1,000 per election limit and to the prohibitions on contributions, must be kept in an account separate from federal funds. Federal funds may not be used to solicit contributions to this account. 11 CFR 9004.4(b). Further, solicitations to the compliance fund must clearly indicate that contributions will be used for compliance purposes.

Funds may be **transferred from the candidate's primary campaign** to the compliance fund, provided the candidate has sufficient funds to make any required repayments of primary matching funds. See 11 CFR 9003.3(a)(1)(ii). Contributions designated for the primary campaign, but which are made after the beginning of the general election expenditure report period, may also be deposited in the compliance fund provided the candidate committee complies with certain requirements specified in the regulations. See 11 CFR 9003.3(a)(1)(iii).

Disbursements from the Compliance Fund. Disbursements from the compliance fund (other than funds loaned to the candidate's campaign for start-up expenses) are **not** chargeable to the candidate's spending limit, but they are reportable. These funds may be used to comply with the Act; pay civil penalties resulting from violations of the Act;** make repayments of public funds to the U.S. Treasury, if required; pay up to 10 percent of all overhead costs allocable to the campaign's other legal and accounting compliance costs; and solicit contributions to the compliance fund. The compliance fund may **not** be used to pay debts remaining from the candidate's primary campaign, unless excess funds remain after all debts of the general election campaign are liquidated. 11 CFR 9003.3(a)(2).

Start-Up Expenses

Candidates are permitted to make disbursements to set up a basic campaign organization **before** the expenditure report period begins or before they receive public funds. Such disbursements count as qualified campaign expenditures and thus must ultimately be defrayed with public funds. In the interim before public funds are available, however, the candidate may fund such disbursements from other sources. Subject to the restrictions detailed in the regulations, the candidate may borrow from the compliance fund, from banks in the ordinary course of business, from the primary campaign and from personal funds. 11 CFR 9003.4(a) and (b).

Winding Down Costs

Payments made to terminate campaign activity after the close of the expenditure report period are considered qualified campaign expenditures. For example, rental of office space required for "winding down" activities of the campaign is a qualified campaign expenditure. Thus, candidates must use federal funds to defray this expense. 11 CFR 9004.4(a)(3).

Documentation of Expenses

The candidate has the burden of proving that all disbursements made by the candidate, or any authorized committee or agent of the candidate, are qualified campaign expenses. Minimum documentation required for qualified campaign expenses includes:

For disbursements of $200 or less, a canceled check to the payee (unless the disbursement is from a petty cash fund) 11 CFR 9003.5(a)(2); and

For any single disbursement exceeding $200, a receipted bill from the payee or a canceled check plus a bill, invoice, voucher or memorandum from either the candidate or the committee. 11 CFR 9003.5(a)(1).

Audits

It is the candidate's responsibility to facilitate an FEC audit by gathering records in a central location and providing the necessary space and personnel to perform the audit. All bank records and supporting documentation for expenditures of public funds must be provided by the candidate. 11 CFR 9003.7.

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*Any individual who is not actively conducting a campaign in more than one state for the Presidency and Vice Presidency ceases to be a candidate. 11 CFR 9002.2.

Civil or criminal penalties resulting from violations of the Act may **not be paid from federal funds. 11 CFR 9002.11(c)(3).

The RECORD *is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Max L. Friedersdorf, Chairman; John Warren McGarry, Vice Chairman; Joan D. Aikens; Thomas E. Harris; Frank P. Reiche; Robert O. Tiernan; J.S. Kimmitt, Secretary of the Senate, Ex Officio; Edmund L. Henshaw, Jr., Clerk of the House of Representatives, Ex Officio. For more information, call 202/523-4068 or toll-free 800/424-9530.*

STATUS OF FEC REGULATIONS

Regulations*	Date Sent to Congress	Federal Register Publication	Date Prescribed** by the Commission
11 CFR 9033.9 Suspension of Primary Matching Fund Payments	4/10/80	4/15/80 (45 FR 25378)	7/3/80
11 CFR Part 4 Public Records and the Freedom of Information Act	Not applicable	5/13/80 (45 FR 31291)	6/12/80
11 CFR Part 5 Access to Public Disclosure Division Documents	Not applicable	5/13/80 (45 FR 31292)	6/12/80
11 CFR, Parts 100 and 110 Contributions to and Expenditures by Delegates to National Nominating Conventions	5/14/80	5/23/80 (45 FR 34865)	Congressional approval pending
11 CFR, Parts 100, 106, 110, 140-146 and 9001-9007 Public Financing of Presidential General Election Campaign	6/13/80	6/27/80 (45 FR 43371)	Congressional approval pending

*The chart is cumulative, listing all amendments to the FEC Regulations proposed after the 1980 edition of 11 CFR was published, including any technical amendments.

**The Commission may prescribe its regulations 30 legislative days after it has transmitted them to Congress, provided neither the House nor the Senate disapproves them during this period.

Reporting Requirements

General Election vs. Other Elections. The candidate's authorized campaign committee(s) must file separate reports for the general election campaign and for other elections. 11 CFR 9006.1(a).

Campaign Funds vs. Compliance Funds. With regard to the general election, the campaign must file two separate reports: one disclosing receipts and disbursements for qualified campaign expenditures, the other disclosing activity of the legal and accounting compliance fund. 11 CFR 9006.1(b).

Disputes Procedure for Certification and Repayment

For those instances when a candidate challenges a Commission determination concerning certifications and repayments of public funds, a procedure has been standardized to conform with due process requirements. The candidate has an opportunity to respond to a Commission decision within a specified time, engage counsel if he/she so desires and submit written evidence in support of his/her position. The Commission is required to consider the evidence submitted and provide a statement of reasons underlying its final determination, including a summary of any investigation conducted. 11 CFR 9005.2 and 9007.2(b).

The regulations governing the public financing of Presidential general election campaigns were published in the *Federal Register* on June 27, 1980 (45 FR 43371). They will be promulgated 30 legislative days after their transmittal to Congress, provided neither the House nor the Senate disapproves them.

OPINIONS

ADVISORY OPINION REQUESTS

Advisory Opinion Requests (AOR's) pose questions on the application of the Act or Commission Regulations to specific factual situations described in the AOR. The following chart lists recent AOR's with a brief description of the subject matter, the date the requests were made public and the number of pages of each request. The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject	Date Made Public	No. of Pages
1980-76	Exclusion of candidate's fees for television appearances from honorarium limit.	6/19/80	4
1980-77	Allocation of party expenditures for television ads on behalf of several candidates.	6/20/80	2
1980-78	Use of campaign finance information obtained from disclosure reports in candidate's fundraising letter.	6/23/80	1
1980-79	Title of unauthorized committee advocating candidate's defeat.	6/27/80	2
1980-80	Separate principal campaign committees for Congressional primary and special elections held on the same day.	7/1/80	1
1980-81	Application of 1980 annual limit to individual's 1979 contributions to draft committee.	7/3/80	2
1980-82	Individual's involvement in independent expenditure committee operating on behalf of Presidential nominee.	7/8/80	3
1980-83	Reporting requirements for inactive Presidential primary candidate.	7/8/80	4
1980-84	Committee's use of leftover stationery and checking account bearing its name prior to 1979 Amendments to the Act.	7/11/80	1
1980-85	Gift from descendant's estate as contribution to multicandidate committee.	7/15/80	2
1980-86	Abbreviated name used by corporate separate segregated fund.	7/15/80	1

ADVISORY OPINION REQUEST WITHDRAWN

AOR 1980-61 (application of contribution and expenditure limits to independent expenditure committee for the Presidential general election) was withdrawn by its requester on July 1, 1980.

ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR's. Any qualified person who has requested an AO and acts in accordance with the opinion will not be subject to any sanctions under the Act. Other persons may rely on the opinion if they are involved in a specific activity which is indistinguishable in all material aspects from the activity discussed in the AO. Those seeking guidance for their own activity, however, should consult the full text of an AO and not rely only on the summary given here.

AO 1980-42: Fundraising Concerts Conducted for Senatorial Campaign Committee

Volunteer services provided by entertainers for fundraising concerts to be held on behalf of the Hart for Senate Campaign Committee, Inc. (the Committee) would not count as in-kind contributions to the Committee, provided the Committee reimbursed the entertainers for their expenses. 2 U.S.C. §431(8)(B). Further, the Committee could contract with a promoter who, as an agent of the Committee, would handle concert arrangements.

Under the contractual arrangements, ticket sales could be made at outlets normally used for commercial concerts, and tickets issued could be identical to those issued for nonpolitical concerts. Advance publicity and notices at sales locations, however, would have to inform ticket purchasers that the concert would benefit the Committee.

Since ticket sales would be treated as contributions from the purchasers, the proceeds would have to be handled as contributions. The Committee would have to establish controls to ensure that purchasers did not violate the Act's dollar limits or prohibitions on contributions. The identity of contributors would have to be obtained when any person's ticket purchases exceeded $50 at the same selling location. 2 U.S.C. §432(b); 11 CFR 102.9.

Checks for ticket purchases would not have to be made payable to the Committee, but they would have to be deposited in the special account established for the fundraiser. Proceeds deposited in the special account would then be forwarded to the campaign's treasurer within 10 days of their receipt. 2 U.S.C. §432(b)(1); 11 CFR 102.8(a). The treasurer, in turn, would have to deposit the proceeds in a designated campaign depository within 10 days of their receipt. 11 CFR 103.3(a). Alternatively, the promoter, as the Committee's agent, could transfer the proceeds from the special account directly to a designated Committee account within 10 days of their receipt. The promoter would also have to keep records for all ticket proceeds. 2 U.S.C. §432; 11 CFR 102.9.

The promoter could pay for concert expenses from ticket sale proceeds deposited in a special account established in an official campaign depository. Similarly, funds in this account could be used to pay the promoter the usual and normal fee for his services. The promoter would then forward the balance of the proceeds to the Committee. All expenses (including fees to the promoter) would be subject to the Act's recordkeeping and reporting requirements. Commissioner Frank P. Reiche issued a dissenting opinion. (Date Issued: June 25, 1980; Length, including dissenting opinion: 14 pages)

AO 1980-44: Collection Systems Proposed by Labor Organization for its Separate Segregated Fund

Two collection systems proposed by the National Education Association (NEA) to collect contributions for its political action committee, NEA-PAC, would be permissible; however, two other proposed systems would not.

Under the current system, NEA members authorize deduction of a fixed sum from their pay checks for contributions to NEA-PAC and for their unified membership dues to NEA. To ease the administrative burden imposed by a provision of the Act requiring timely transmittal of political contributions to the treasurer of a political committee (2 U.S.C. §432(b)(2)), NEA proposed four alternative payroll deduction systems, all of which would be less costly and time-consuming than NEA's current collection system.

Under the first proposed collection system, the entire NEA-PAC contribution would be deducted from the first payroll deduction check of NEA's membership year. Membership dues would then be deducted from subsequent checks. No change would be made in the members' current payroll deduction authorization form. The **third proposed system** is identical to the first, except that the authorization form would indicate that NEA-PAC's contribution was being drawn entirely from the first payroll deduction check.

These two collection systems would **not** be permissible. By deferring its receipt of membership dues in order to facilitate member contributions to NEA-PAC, NEA would be giving "something of value, if not an advance . . . to NEA-PAC." Therefore, NEA's service would constitute a prohibited contribution from NEA to NEA-PAC. 2 U.S.C. §441b (b). Even if NEA members signed authorization cards agreeing to defer their membership dues, a prohibited in-kind contribution would still result since NEA – not its individual members – would be providing the deferred receipt of dues.

Under the **second proposed collection system,** the NEA-PAC contribution would be deducted in one lump sum from the last payroll deduction check after all membership dues had already been deducted from previous checks. There would be no change in the authorization form. The **fourth proposed system** is the same as the second except that the authorization form would indicate the change in the payroll deduction system.

These collection systems would be permissible because NEA-PAC's contributions would be deferred, rather than NEA's membership dues. Therefore, NEA would not be making a prohibited in-kind contribution to NEA-PAC. To be fully permissible, however, the second and fourth collection systems would also have to meet all legal requirements pertaining to the solicitation, collection and transmittal of contributions to NEA-PAC. (Date Issued: July 3, 1980; Length: 5 pages)

AO 1980-46: Fundraising Plan of Independent Expenditure Committee

Expenditures made by the National Conservative Political Action Committee (NCPAC) for a mass mailing that advocates a candidate's election and solicits contributions to his campaign through NCPAC (as a conduit) would be considered an in-kind contribution to the candidate's principal campaign committee, rather than an independent expenditure.

The solicitation system proposed by NCPAC for the mass mailing would consist of a letter suggesting that a contribution for the candidate be mailed to NCPAC, which would gather and transmit the contributions to the candidate's principal campaign committee. Even if no communication occurred between NCPAC and the candidate or any agents of his campaign, expenditures for the mass mailing would be an in-kind contribution to the candidate's principal campaign committee because, in accepting the earmarked contributions forwarded through NCPAC, the candidate's campaign would also be accepting the solicitation services provided by NCPAC.

continued

FEDERAL REGISTER NOTICES

The list below identifies all FEC documents which appeared in the *Federal Register* between June 27, 1980, and July 17, 1980. Copies of these notices are **not** available from the FEC.

Notice	Title	Federal Register Publication Date	Citation
1980-22	Public Financing of Presidential General Election Campaigns (Transmittal of Regulations to Congress)	6/27/80	45 FR 43371
1980-23	Federal Election Commission Opinion and Regulation Index (Notice of Availability)	6/24/80	45 FR 42369
1980-24	Suspension of Primary Fund Payments (Announcement of effective date for Regulations)	7/3/80	45 FR 45257
1980-25	Filing Dates for Michigan Special Primary and General Elections	7/17/80	45 FR 47919

NCPAC would be considered a conduit transmitting the contributions to the candidate's principal campaign committee. Since, however,. NCPAC would exercise no control over the contributions made to the candidate, the contributions would not count as contributions by NCPAC and would not count against NCPAC's $5,000 contribution limit. 11 CFR 110.6(d)(1). Instead, the contributions would count against the individual contributor's limits. 2 U.S.C §441a(a) and 11 CFR 110.1.

As a conduit, NCPAC would be required to report the contributions to both the candidate's principal campaign committee and to the Federal Election Commission according to reporting procedures detailed in Commission Regulations. See 11 CFR 110.6(c)(4)(i), (ii) and (iii). Chairman Max L. Friedersdorf filed a dissenting opinion. (Date Issued: June 25, 1980; Length: 6 pages)

AO 1980-53: Donation of Promotion Item to Host Committees of National Conventions

Kelly Services, Inc. may donate canvas tote bags to the host committees of the Democratic and Republican National Conventions for free distribution to delegates and convention attendees. Costs of providing the tote bags would not count against either national party's expenditure limits for the convention.

Kelly Services, Inc. may provide the tote bags, which will be inscribed with the convention's name on one side and the company's name on the other, because the bags are of nominal value, are provided solely for bona fide advertising purposes, and are provided in the ordinary course of business. 11 CFR 9008.7(c)(2). (Date Issued: June 17, 1980; Length: 2 pages)

AO 1980-54: Contributions by National Bank

The First National Bank of West Monroe may not make contributions to the Louisiana Political Action Council (LAPAC), a committee supporting candidates for state office. The Act prohibits national banks from making contributions and expenditures in connection with "any election to any political office" (2 U.S.C. §441b(a)), including donations to political committees which support candidates for state or local office as well as federal office. (Date Issued: June 17, 1980; Length: 2 pages)

AO 1980-55: Corporate Assistance for Secretary of State's Voter Registration Drive

The Office of the Secretary of State for Connecticut, which administers the state's elections, may accept corporate assistance in undertaking the following nonpartisan voter registration activities, provided these activities are permitted by state law:

Reprinting and Distributing Voter Registration Information. A corporation may use its facilities to reprint and distribute to the general public materials prepared by the Secretary of State on topics such as voter registration and party enrollment. These reprints may contain the corporation's logo, identification or a statement identifying the corporation's participation, such as: "Printed and distributed as a public service by the XYZ Corporation in conjunction with the Secretary of State of Connecticut." 11 CFR 114.4(c)(2).

Voter Registration Drives. Since the voter registration drives which the state's registrars of voters plan to undertake would be completely nonpartisan, corporations may make their facilities available for the drives. The corporations' employees may also assist in the drives as officially appointed assistant registrars. 11 CFR 114.4(d)(2) and (3). (Date Issued: June 25, 1980; Length: 4 pages)

AO 1980-56: Method of Counting Votes to Determine Minor Party Candidate's Eligibility for Public Funding

The total number of votes cast in the 1980 Presidential general election for Mr. Barry Commoner will be counted to determine his eligibility for retroactive public funds and the appropriate amount due – regardless of whether his name appears on a state ballot as an independent candidate or as the Presidential candidate of the Citizens' Party. Under the Act, a minor or new party candidate is eligible for retroactive public funding if the candidate of a political party receives five percent or more of the total number of popular votes cast for President. 11 CFR 9004(a)(3). (Date Issued: June 17, 1980; Length: 2 pages)

AO 1980-57: Fundraising to Defray Candidate's Litigation Fees

The Bexar County Democratic Party (the Committee) may solicit funds for Congressman Henry B. Gonzalez, which Mr. Gonzalez will then use to defray litigation fees he incurred while challenging the nominating petitions of a potential Republican opponent. Since Mr. Gonzalez's litigation activity could influence the outcome of a federal election by preventing his opponent's name from appearing on the state ballot, funds raised by the Committee would be considered "contributions" to Mr. Gonzalez's principal campaign committee and would be subject to the reporting requirements, limitations and prohibitions of the Act.

The Committee could raise funds for Mr. Gonzalez's litigation fees by using either one of the following methods:

1. If the Committee solicited funds and contributed them to Mr. Gonzalez's principal campaign committee, the Committee would be required to register and report as a "political committee" under the Act once it had received contributions in excess of $5,000. 2 U.S.C. §§433 and 434. Contributions to the Committee by an individual and contributions by the Committee to Mr. Gonzalez would each be subject to a $5,000 per year limit, provided the Committee qualified as a multicandidate committee (i.e., the committee had been registered for at least six months, had received contributions from more than 50 donors and had contributed to at least five federal candidates).
2. Alternatively, Mr. Gonzalez could mail out a fundraising letter on the Committee's letterhead. In this case, the fundraising would be an activity of Mr. Gonzalez's campaign. Therefore, expenditures made for the solicitation, and any funds received, would be expenditures by and contributions to Mr. Gonzalez's principal campaign committee. As such, they would be reportable by Mr. Gonzalez's campaign. The Gonzalez campaign committee would also be required to include a statement on the solicitation authorizing the fundraising activity. 2 U.S.C. §441d. (Date Issued: June 25, 1980; Length: 4 pages)

AO 1980-58: National Bank's Contributions to State Senators' Officeholder Expense Funds

Union Bank and Trust Company (the Bank), a national bank in Grand Rapids, Michigan, may make donations payable by corporate check to the Officeholder Expense Funds of state senators. Michigan law prohibits public officials from using their officeholder expense funds to make contributions or expenditures to further their nomination or election to public office. The Act's ban on political contributions by national banks would not, therefore, apply to donations made to a state officeholder's expense fund if that fund is not utilized in connection with any election to any federal, state or local office. (Date Issued: June 25, 1980; Length: 3 pages)

AO 1980-62: Labor Union's Solicitation of Temporary Employees

The Pipefitters Local 524 Political Action Fund (the Committee), the separate segregated fund of the Pipefitters Local 524 (the Local), may solicit contributions from one category of temporary employees (travel card holders) but **not** from another category (permit card holders).

The Committee proposed soliciting both types of temporary employees through a voluntary payroll deduction plan. One group, the travel card holders, are not members of the Local. They are, however, members of other local unions affiliated with the Local's national organization, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (United Association). Under Commission Regulations, the travel card holders are considered members of the United Association by virtue of being members of one of its affiliated local unions. The Committee may therefore solicit these employees because a subsidiary organization or its separate segregated fund may solicit members of its "parent organization," i.e, the United Association. (See also AO 1978-75.)

The other group of employees, the permit card holders, are not members of the Local or of the United Association. The Committee may not, therefore, solicit this group of employees. 2 U.S.C. §441b(b)(4)(A). Commissioners Thomas E. Harris and Frank P. Reiche filed concurring opinions. (Date Issued: July 3, 1980; Length: 6 pages, including concurring opinions)

AO 1980-64: Labor Organization's Payment of Members' Delegate Expenses

The National Education Association (NEA), a national labor organization, may **not** use its general treasury funds to pay the travel and living expenses of NEA members who will be attending the Democratic and Republican national nominating conventions as delegates.

The Act explicitly prohibits labor organizations from making contributions or expenditures in connection with federal elections. 2 U.S.C. §441b. The Commission's proposed delegate selection regulations* reinforce this prohibition by explicitly stating that "all contributions to and expenditures by any delegate . . . are subject to the prohibitions of 11 CFR 110.4(a), Part 114; 2 U.S.C. §§441b and 441e." Moreover, the delegates' expenses would not be considered the type of exempted expenditure which a labor organization may make for nonpartisan get-out-the-vote drives directed to members. 11 CFR 114.3(c)(3). (Date Issued: July 9, 1980; Length: 3 pages)

800 LINE

PRESIDENTIAL ELECTIONS

The Office of Public Communications receives numerous inquiries from the public on its toll-free line: 800/424-9530. The following questions and answers respond to questions the office has received about the public financing program for the 1980 Presidential general election.

Question: How are public funds made available to Presidential candidates for their general election campaigns?

Answer: Public funds for the Presidential general election are made available through the Presidential Election Campaign Fund, which consists of dollars voluntarily checked off by taxpayers on their Federal income tax returns.

Question: Who is eligible to receive public financing, and how much money may a candidate receive?

Answer: Each **major party* Presidential nominee** is eligible for a public grant of $20 million plus the cost-of-living adjustment (or $29.4 million in 1980) for campaigning in the general election.

Qualified minor party* candidates are eligible to receive a proportionate amount of the grant available to major party candidates. This proportionate grant is based on the number of votes the minor party candidate or his/her respective party received in the last Presidential general election. **Eligible new party* candidates** may receive a partial grant **after** the general election based on the number of votes they receive in the 1980 election.

Question: How do Presidential candidates obtain public funding?

Answer: Requests for public funds are reviewed for eligibility by the FEC and then certified by the FEC to the Department of Treasury, which in turn disburses the funds. To be eligible, candidates must agree in writing to:

- Limit campaign spending to the amount of the grant available to major party candidates ($20 million plus the cost-of-living adjustment). **Note**: This spending limit applies to major, minor and new party candidates;
- Spend public funds only on qualified campaign expenditures (i.e., expenditures which influence the campaign for the Presidency);

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*A major party is a political party whose nominee receives 25 percent or more of the total popular votes in the preceding Presidential election; a minor party is a political party whose nominee received between 5 and 25 percent of the total popular votes in the preceding Presidential election; and a new party is a political party whose nominee received less than 5 percent of the total votes in the preceding election.

- Repay public funds to the U.S. Treasury, if required; and
- Facilitate an FEC audit of the campaign by gathering all records in a centralized location and providing the necessary space and personnel to assist in the audit.

Question: May Presidential candidates who receive public funding also accept private contributions?

Answer: **Major party candidates** who accept public funding may **not** accept any private contributions for their general election campaigns, except for a special account maintained exclusively to pay expenses related to their complying with the election law. **Minor and new party candidates** who accept partial public financing may, in addition to accepting contributions for their compliance fund, accept private contribution for the campaign itself, as long as the sum of public funds and private contributions does not exceed a major party candidate's total grant.

Question: May a candidate spend any of his or her own funds, or funds of his or her family, to promote his or her candidacy?

Answer: Yes. A Presidential candidate who accepts public funding may spend up to $50,000 in personal funds (including family funds over which the candidate had direct legal control at the time he/she became a candidate) to promote his or her campaign for the Presidency. These expenditures are not chargeable to the spending limit.

Question: Are a candidate's legal and accounting expenses chargeable to his/her spending limit for the general election?

Answer: Payments for legal and accounting fees related to compliance with the Act, which are paid from the candidate's compliance fund, are **not** chargeable to the candidate's spending limit; but they are reportable. (The compliance fund may also be used for other purposes, as specified in the regulations. See **Disbursements from the Compliance Fund** on page 2 of this issue of the *Record.)*

Question: Under what circumstances must a candidate repay public funds?

Answer: Repayment of public funds is required in several situations, including cases where the amount of public funds received exceeds the amount to which the candidate is entitled; where spending limits are exceeded; where public funds are used for purposes other than "qualified campaign expenditures"; or where public funds remain after debts and obligations have been paid.

Question: May a candidate dispute an FEC determination concerning certifications and repayments of public funds?

Answer: Yes. Commission Regulations provide a dispute procedure, consistent with due process requirements, whereby candidates may challenge FEC decisions concerning certifications and repayments. The FEC must respond by investigating any additional evidence provided and by submitting its findings in writing. 11 CFR 9005.2 and 9007.2(b).

REPORTS

LOUISIANA PRIMARY RESCHEDULED

The filing date for the Louisiana pre-primary report has been changed because the Louisiana primary election for Congressional candidates has been rescheduled for September 13 (instead of September 20). This change affects the authorized committees of all federal candidates in the primary election and any other political committees that support a federal candidate in the Louisiana primary (except those filing on a monthly basis). The new schedule for filing a 12-day pre-election report for the Louisiana primary is as follows:

Closing Date of Books	Mailing Date of Report (if sent by registered by certified mail)	Filing Date
August 24, 1980	August 29, 1980	September 1, 1980

THE LAW IN THE COURTS

DISTRICT COURT GRANTS SUMMARY MOTIONS IN COMMON CAUSE ET AL. V. FEC ET AL.

On April 30, 1980, the U.S. District Court for the District of Columbia granted summary judgment in two cross motions filed by parties to the suit, *Common Cause et al.* v. *FEC et al.* (Civil Action No. 78-2135).

Common Cause had filed its motion for summary judgment in November 1978, requesting that the Court rule the FEC had acted contrary to law in failing to take final action on Common Cause's administrative complaint within 90 days of its being filed. 2 U.S.C. §437g(a)(9)(B)(ii). In its complaint, Common Cause had asserted that the American Medical Political Action Committee (AMPAC), the separate segregated fund of the American Medical Association (AMA), and the state political action committees of AMA's state affiliates constituted a single political committee by virtue of their affiliation. 2 U.S.C. §441a(a)(5). Therefore, alleged Common Cause, AMPAC and its affiliated state PACs shared a single contribution limit of $5,000 per candidate, per election. Common Cause's complaint listed numerous instances in the 1976 Congressional elections where the combined contribution of AMPAC and an affiliated state PAC to a candidate had exceeded the $5,000 limit.

At the time Common Cause filed its motion for summary judgment, the Commission had entered into conciliation agreements only with AMPAC and a few of the state PACs named in the June 1978 complaint. By fall of 1979, however, the Commission had entered into separate agreements with an additional five state PACs; between Fall 1979 and Spring 1980 the Commission entered into agreements with eleven other state PACs and was preparing to enter into 10 additional agreements. The Court also noted that in February 1977 the Commission had broadened the scope of its initial investigation to include all of the AMA's state affiliates and their PACs. Moreover, the Commission had begun investigating four additional complaints which also alleged violations of the Act's contribution limits by AMPAC and its affiliated state PACs.

Common Cause nevertheless maintained that the FEC had acted contrary to law in not taking final action on its complaint within 90 days. The FEC, on the other hand, viewed the 90-day provision as jurisdictional, giving the Court power to decide after the 90-day period whether or not the Commission had acted contrary to law.

In addition to supporting the FEC's interpretation of the 90-day provision, the Court noted that the determination of whether AMPAC and its state PACs were affiliated (i.e., whether they had been established, financed, maintained or controlled by the same entity) was a factual question requiring proof provided by extensive investigation. Therefore, the Court did not find the FEC's efforts to collect further evidence to be an abuse of discretion. Moreover, the Court found that the FEC's decision not to investigate combined contributions by state PACs affiliated with AMPAC (in addition to the combined AMPAC-State PAC contributions it had investigated) was not contrary to law since Common Cause had mentioned only one such occurrence among the 69 violations it had cited. The Court did, however, order the Commission to either enter into conciliation agreements with the ten remaining respondents named in Common Cause's complaint within 30 days of the Court's ruling or bring suit against them. The Commission did enter into conciliation agreements with the remaining respondents, and the Court issued an order on June 13, 1980, dismissing the case.

LITIGATION STATUS INFORMATION

The following is a list of new litigation involving the Commission, together with the date the suit was filed, the court involved, the docket number and a brief description of the major issue(s) involved in the case. Persons seeking additional information on a particular case should contact the court where the suit is filed or the Commission.

Felice M. Gelman and Citizens for LaRouche, Inc. v. FEC, U.S. Court of Appeals for the District of Columbia Circuit, Docket No. 80-1646, June 11, 1980.

> Pursuant to 26 U.S.C. §9041, plaintiffs seek review of an FEC decision issued May 29, 1980, that Lyndon H. LaRouche had not reestablished eligibility for primary matching funds in the Michigan Democratic Presidential Primary of May 20, 1980, and that the Commission would therefore proceed with a post-primary audit of Mr. LaRouche's campaign.

COMPLIANCE

FEC CHANGES LATE AND NONFILER PROCEDURES

In March and July 1980, the Commission approved new procedures for notifying authorized and unauthorized committees of their reporting obligations under the Act. These procedures reflect the 1979 Amendments to the federal election law (2 U.S.C. §§437g(b) and 438(a)(7)). The Commission will continue to notify late filers and nonfilers of their reporting requirements under the Act. However, no compliance action will be initiated until **after** the Commission has notified nonfiling committees of their failure to comply with reporting obligations and, in the case of authorized candidate committees, **after** the Commission has published the names of nonfilers. The nonfiler procedures are summarized below:

Election Year Procedures

Before each reporting deadline, a "prior notice" explaining reporting requirements for the particular type(s) of reports due will be sent to all registered committees. For the 12-day pre-primary report, this notice will be sent to all individuals who appear on the state ballot.

Note: Unauthorized committees will **not** be sent a prior notice for the pre-primary report. (Unauthorized committees include party committees, nonparty committees and unauthorized single candidate committees.) Instead, the prior notice for quarterly reports will remind unauthorized committees of their obligation to file pre-primary reports for those primary elections in which they made either contributions or expenditures (if these contributions and expenditures were not reported on a prior report).

After each reporting deadline, the Commission will send a mailgram to all registered political committees that fail to file a report, informing them that their reports have not been received.

After the mailgram has been sent, the Commission will publish the names of all *authorized candidate committees* which still have not filed their report by the particular date stated in the mailgram. The Commission will not, however, publish the names of any other types of committees which fail to file required reports, since their publication is not authorized in the 1979 Amendments to the Act. Instead, the Commission will handle such nonfilers and late filers through normal compliance procedures.

Nonelection Year Procedures

During nonelection years, the Commission will send prior notices to filers semiannually. Procedures for notifying late or nonfilers and publishing the names of authorized candidate committees that fail to file a report are the same as those for an election year.

SUMMARY OF MUR's

Selected compliance cases, which have been closed and put on the public record, are summarized in the *Record.* Compliance matters stem from possible violations of the Federal Election Campaign Act of 1971, as amended, which come to the Commission's attention either through formal complaints originating outside the Commission or by the FEC's own monitoring procedures. The Act gives the FEC the exclusive jurisdiction for the civil enforcement of the Act. Potential violations are assigned case numbers by the Office of General Counsel and become "Matters Under Review" (MUR's). All MUR investigations are kept confidential by the Commission, as required by the Act.

MUR's may be closed at any one of several points during the enforcement process, including when the Commission:

- Determines that no violation of the Act has occurred;
- Determines that there is no reason to believe or no probable cause to believe a violation of the Act has occurred;
- Enters into a conciliation agreement with the respondent;
- Finds probable cause to believe a violation has occurred and decides to sue; or
- Decides at any point during the enforcement process to take no further action.

After the MUR is closed and released by the Office of General Counsel, the Commission makes the MUR file available to the public. This file contains the complaint, the findings of the General Counsel's Office and the Commission's actions with regard to the case, including the full text of any conciliation agreement. The Commission's actions are not necessarily based on, or in agreement with, the General Counsel's analysis.

Selection of MUR's for summary is made only from MUR's closed after January 1, 1979. The *Record* article does not summarize every stage in the compliance process. Rather, the summary provides only enough background to make clear the Commission's final determination. The full text of these MUR's and others which were closed between 1976 and the present are available for review and purchase in the Commission's Public Records Office.

MUR 885: Express Advocacy, Required Authorization Notice, Federal/State Accounts

On November 21, 1979, the Commission entered into a conciliation agreement with a political committee that had violated provisions of the Act by its failure to register and file timely reports as a political committee, to include authorization/nonauthorization notices on advocacy literature and to either keep separate federal and state accounts for contributions or notify potential contributors of the Act's contribution limits.

Complaint: On November 29, 1978, a membership organization filed a complaint alleging that the political committee:

1. Had violated 2 U.S.C. §441a(a)(1) by contributing over $1,000 to a candidate, since the committee was ineligible for the multicandidate contribution limits ($5,000 per candidate per election).
2. Had failed to report its affiliation with a nonprofit corporation in its Statement of Organization, despite alleged financial support from that corporation and resulting status as a separate segregated fund of the corporation. 11 CFR 100.14(c) and 100.15.
3. Had neglected to register with the Commission as a political committee when it allegedly exceeded the $1,000 contribution or expenditure threshold that, at that time, triggered required registration. 2 U.S.C. §433(a).
4. Had failed to report alleged expenditures for its pre-primary and pre-general election brochures. 2 U.S.C. §434(b).

The Commission voted to take no action on the first allegation and, on the second allegation, found no reasonable cause to believe the Act had been violated. The Commission did, however, take action on the third and fourth allegations. The investigation also disclosed other violations, detailed below.

General Counsel Reports:

Registration and reporting violations. Although the report, submitted by the committee to state officials after the primary, disclosed donations and costs for a pre-primary brochure which exceeded the $1,000 threshold, the committee had not registered with the FEC since it did not believe its pre-primary brochure was an endorsement of a federal candidate. The brochure urged readers to vote for candidates whose stand on a certain issue agreed with the committee's. The brochure identified federal and state candidates' positions on the issue in question. The General Counsel reported that "any reasonable person" would have known the committee was endorsing a candidate whose views agreed with the committee's and that the brochure clearly attempted to influence primary election results. Therefore, the General Counsel recommended the Commission find reasonable cause to believe the committee had violated 2 U.S.C. §433(a) by the late filing of its Statement of Organization. (The Statement had not been filed until some months after the primary.) Moreover, because the brochure endorsed a federal candidate, the expenditures and contributions connected with the brochure should have been reported to the Commission. The General Counsel recommended a reason to believe finding that the committee had violated 2 U.S.C. §434 by filing late pre- and post-election reports.

Authorization/nonauthorization statement violation. The Office of General Counsel stated in its report that the pre-general election brochure presented a "clear case of 'express advocacy.' " Similar in format to the pre-primary brochure, the pre-general election brochure pictured state and federal candidates, noted their opinions on certain issues, and encouraged readers to "vote for" and "elect" those candidates who supported the committee's stand on those issues. Since the committee neglected to include an authorization/nonauthorization statement, the General Counsel recommended the Commission find reason to believe the committee had violated 2 U.S.C. §441d(1) and 11 CFR 110.11(c). The General Counsel also recommended a reason to believe finding that the committee had violated 11 CFR 110.11(a)(1)(ii) by not including "the name of the person who made or financed the expenditure for the communication." Although the committee responded that its name and address appeared on the brochure, the General Counsel maintained that the brochure should have stated "that it was financed by" the committee.

State/federal contribution violation. After a Commission investigation, the General Counsel recommended a reason to believe finding that the committee had violated the 11 CFR 102.6 requirement that a committee keep either separate accounts for state and federal contributions or a single account. In the latter case, all contributions must be permissible under the Act and all contributors must be informed of the Act's contribution limits. The committee indicated no separate accounting of contributions; nor did the solicitations notify potential contributors of the Act's contribution limits.

Commission Determination: On April 25, 1979, the Commission found reasonable cause to believe that the committee had violated 2 U.S.C. §§433, 434 and 441d and 11 CFR 110.11(a)(1)(ii) and 110.11(c). On September 29, 1979, the Commission found reasonable cause to believe that the committee had also violated 11 CFR 102.6. On November 21, 1979, the Commission entered into a conciliation agreement that included payment of a civil penalty.

MUR 1025: Solicitation of Members by Labor Union's Separate Segregated Fund

On December 17, 1979, the Commission found no reasonable cause to believe that a labor organization had violated 2 U.S.C. §441b(b)(3)(A) and (C) by requiring contributions to its separate segregated fund as a condition of membership and by failing to inform its members of their right to refuse to contribute without reprisal.

Complaint: On September 5, 1979, six members of a labor organization filed a complaint with the Commission alleging that the union's collective bargaining agreement established, as a condition of membership, an automatic payroll deduction for the union's separate segregated fund. The union's constitution allowed for a refund of the assessment, but only upon request. The complainants specifically referred to this assessment mechanism as a "reverse checkoff," a violation of 2 U.S.C. §441b(b)(3)(A) and 11 CFR 114.5(a)(1). The complainants also alleged that, by failing to inform its members of their right to refuse to contribute, the union had violated 2 U.S.C. §441b(b)(3)(C). Finally, by having been denied the freedom to refuse to contribute, the complainants believed their First Amendment rights of freedom of speech and association had been violated.

General Counsel Reports: Investigation by the General Counsel revealed that the complainants had misunderstood the operation of the union's separate segregated fund, which in fact comprised two funds. One fund, subsidized by the allegedly illegal checkoff deduction, was not used to make expenditures for federal elections and was therefore termed "nonvoluntary." A second fund was used for federal elections but satisfied the Act's solicitation requirements and was therefore termed "voluntary." Also, its monies were not commingled with the other, nonvoluntary fund. Since the complainants based their allegations on the operation of the nonvoluntary fund that was not used for federal elections and was not, therefore, within the Commission's jurisdiction, the General Counsel recommended the Commission find no reasonable cause to believe the union had violated §441b(b)(3).

Commission Determination: On December 17, 1979, the Commission found no reasonable cause to believe the respondent had violated §441b(b)(3).

CLEARINGHOUSE

SUBSCRIPTIONS TO ELECTION LAW UPDATES AND ELECTION CASE LAW SERIES

The following subscriptions are available from the FEC's Clearinghouse:

- *Election Law Updates.* This quarterly series includes a synopsis of all key federal and state election laws, a comprehensive index to aid in research and an annual cumulative summary. Subscription price: $11.00 a year.
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PUBLIC FINANCING

The summary chart below provides cumulative information on certifications of primary matching funds made to Presidential candidates between January 1, 1980, and July 3, 1980. The chart includes data on each candidate's total submissions (and resubmissions) of private contributions for primary matching funds, total funds certified by the Commission to each candidate and the total amount of matching funds to which the candidate is still entitled, based (where appropriate) on the candidate's estimate of new outstanding campaign obligations.

FEDERAL ELECTION COMMISSION
YEAR-TO-DATE ACTIVITY FOR
PRESIDENTIAL CANDIDATES RECEIVING MATCHING FUNDS

Name of Candidate	No. of Submissions	Amount Requested	No. of Contributions	No. of Resubmissions	Amount Certified by Commission To Date	Maximum Entitlement Remaining*
ANDERSON, John B.	7	2,895,483	80,744	0	2,680,347	.00
BAKER, Howard H. Jr.	11	2,440,576	53,782	0	2,383,263	557,631
BROWN, Edmund G. Jr.	14	967,443	15,126	2	857,182	95,033
BUSH, George	11	6,245,656	84,474	0	5,608,654	1,751,345
CARTER, Jimmy	16	4,821,029	54,462	0	4,329,812	3,030,187
CRANE, Philip M.	8	2,000,338	89,840	0	1,636,638	378,500
DOLE, Robert J.	5	467,117	3,752	1	446,226	108,798
KENNEDY, Edward M.	15	3,584,453	65,023	0	3,402,434	3,957,565
LAROUCHE, Lyndon H.	14	567,753	10,063	12	526,164	3,972
REAGAN, Ronald	8	7,991,331	209,341	0	7,115,168	244,831
TOTALS	**109**	**$31,981,183**	**666,607**	**15**	**$28,985,891**	

*NOTE: Maximum Entitlement Remaining is based upon candidate's statement of net outstanding campaign obligations.

FEDERAL ELECTION COMMISSION
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Volume 6, Number 9

September 1980

PUBLICATIONS

NEW PUBLICATIONS FOR CONGRESSIONAL CANDIDATES AND PARTY ORGANIZATIONS

During August 1980, the Commission distributed three new publications designed to assist Congressional candidate committees and party organizations in complying with the Act. All three publications reflect the 1979 Amendments to the Act.

1. A *Record Supplement for State and Local Party Organizations* was sent to all registered party committees. It provides general information on sections of the Act which directly affect party political committees and other party organizations. The *Supplement* covers such activities by state and local parties as: coordinated party expenditures (expenditures covered by 2 U.S.C. §441a (d)); activities that benefit candidates for federal office but which are exempt from the definition of "contribution" and "expenditure"; volunteer activity; and recordkeeping and reporting requirements. The *Supplement* is not, however, comprehensive.
2. A revised edition of the *Campaign Guide for Congressional Candidates and Committees* was distributed to the authorized campaign committees of all Congressional candidates registered with the Commission. The *Guide* focuses on those requirements affecting candidates for the U.S. House and Senate, their principal campaign committees and any other authorized committees. The revised *Guide*, printed as a binder insert, covers information needed by these committees to understand the definition of "contribution" and "expenditure" under the Act, to start their campaigns, to conduct their campaigns, to keep records, to file reports and to wind down their campaigns. Appendices provide additional information on contribution limits, independent expenditures, earmarked contributions and assistance provided by the Commission.
3. A revised *Bookkeeping Manual for Congressional Candidates* was also distributed to all authorized committees of Congressional candidates registered with the Commission. The *Manual* provides information on uniform methods of bookkeeping and reporting to assist Congressional candidates and their authorized committees in keeping records and preparing reports required under the Act.

Additional copies of these publications are available free of charge through the FEC's Office of Public Communications, 1325 K Street, N.W., Washington, D.C. 20463; or by calling 202/523-4068 or toll-free 800/424-9530.

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STAFF

FEC APPOINTS NEW STAFF DIRECTOR

On August 21, 1980, the Commission unanimously named B. Allen Clutter, III, as FEC Staff Director. Mr. Clutter, who is currently serving as Executive Director of the Minnesota Ethical Practices Board, will assume the position in mid-September.

Mr. Clutter has served as Executive Director of the Minnesota Ethical Practices Board since January 1976. He has prior experience as an Assistant Professor at the U.S. Air Force Academy and with the Air Force Administrative Units in Thailand and California. He has also worked with the World Press Institute, Macalester College, St. Paul, Minnesota.

A native of Oskaloosa, Iowa, he holds a graduate degree in geography from Eastern Michigan University, and has attended business administration courses at the University of Colorado, Colorado Springs. Mr. Clutter, who was listed among the Outstanding Young Men in America in 1978, currently serves as a faculty member of Hamline University Law School, Continuing Legal Education Program.

Y3. El 2/3:

The Supreme Court referred to Konville v. McLaughlin, 270 A.2d 529 (Del. 1970), and State ex rel Wier v. Reterson, 369 A.2d 1076 (Del. 1976), in its decision. These cases deal with art. II, sec. 21 and art. XV, sec. 6 of the Delaware Constitution, which pertain to the right to hold office. The word "convicted" is interpreted to mean more than a verdict of guilty - it means a verdict of guilty by jury followed by imposition of sentence.

The court held that the removal of the plaintiff was invalid and ineffective from the date of removal until the sentence was imposed. On the date the sentence was imposed, the plaintiff was "convicted" within the meaning of art. XV, sec. 6 of the Delaware Constitution and on that date the removal became valid and effective. The plaintiff was not entitled to any salary or benefits accruing from his office and the question here presented became moot.

Election Contests - Absentee Ballots

Emery v. Robertson County Election Commission, 586 S.W.2d 103 (Tenn. 1979)

In this consolidated action, plaintiffs, one a defeated candidate for the office of sheriff and one a candidate for the office of county commission, challenged the results of an election. The lower court had voided sixty-eight votes (absentee ballots which had been illegally distributed, delivered or irregular on the face of voters' affidavits), had acknowledged that five categories of irregularities had been committed, had declared that two eligible voters had been illegally barred from casting their ballots and had expressed the opinion that in the absence of fraud the election could only be voided in those races in which the number of void votes cast could mathematically affect the race. This decision resulted in declaring a winner in the sheriff's race, dismissing one of the suits affecting a seat on the county commission and directing a recount for the second position on the county commission. When it was determined that a recount was impossible, the lower court ordered a new election for this position because of the "multiplicity of mistakes and/or irregularities and the magnitude of these causes."

The court reversed and held that the elections for the office of sheriff and for the two positions on the county commission were voided and that those offices were declared vacant. The court held that the integrity of the ballot was jeopardized upon the violation of the election law procedural safeguards which were designed (a) to prevent undue influence or intimidation of the free and fair expression of the will of the electors or (b) to insure that only those who meet the statutory requirements for eligibility to vote should cast ballots.

The court held that, although there was no evidence that would justify a finding of fraudulent intent on the part of any of the officials or candidates, the fact that violations of the absentee voting statutes presented the opportunity for fraud, whether committed or intended, affected freedom and purity of the ballot to exactly the same extent as a ballot tainted with actual fraud. See Larson v. Locken, 262 N.W.2d 752 (S.D. 1978). The court held that, whether there is proof of actual fraud only or violations of statutory safeguards only or a combination of the two, the issue was whether or not those acts, viewed cumulatively, compel the conclusion that the election did not express the free and fair will of the qualified voters. See Johnson v. Trnka, 154 N.W.2d 185 (Minn. 1967).

The court cited Hilliard v. Park, 370 S.W.2d 829 (Tenn. 1963), and the purpose section of the 1972 Act, which require a strict rather than a liberal construction of the absentee ballot statutes because the purity of the ballot is more difficult to preserve when voting absent than when voting in person.

Election Contests - Absentee Ballots

In re Judicial Review by Rupublican Candidates, 264 S.E.2d 338 (N.C. Ct. of App. 1980)

Petitioners, successful candidates in the Clay County, N.C., general election, filed a notice of appeal to stay the order of a new election by the state board of elections for certain county offices. The order for a new election was stayed, pending judicial determination of the legality of the board's action. The superior court affirmed the decision of the state board of elections and petitioners appealed. The stay of the order calling a new election was continued pending appellate review.

The court of appeals affirmed and held that: 1) The state board of elections had the authority to conduct a public inquiry and declare portions of the general election void and order a new election for some of the offices without an election contest having been filed (N.C. G.S. 163-22(d)); 2) notice published by the board of a public hearing and inquiry into the processes relative to the general election were sufficient; 3) the alleged denial of cross-examining of some of the witnesses whose testimony was considered by the board in arriving at its findings of fact was not unlawful and unconstitutional; 4) the decision of the state board after consideration of testimony, in executive session, to order a new election was not made on unlawful procedures and is without merit; 5) findings of fact and conclusions of law and order of the state board of elections were supported by competent, substantial and material evidence; and 6) the board of elections may order that a new election be held without showing that the results of the election were affected by the irregularities of the absentee ballots complained of (N.C. G.S. 163-22.1).

Election Contests - Absentee Ballots

Meyer v. Keller, 376 So.2d 636 (La. Ct. App. 1979)

In this election contest the court reversed a ruling of the lower court which called for a new election because of the closeness of the vote. The court stated that a new election for the office of parish police juror was not justified because it was possible to determine the winner of the election by examining the six absentee ballots in question. The court determined that two of the absentee ballots should have been counted because they had been disqualified because of the failure of election officials to follow regulated procedure. The court cited Champagne v. Ackal, 256 So.2d 483 (La. Ct. App. 1972), which states that the general rule is that the choice of the electors will not be set aside because of the failure of a ministerial officer to perform some duty. The court found no statute or jurisprudence which would disqualify two more of the absentee ballots because the electors signed their names on the absentee ballot flap in a slightly different way than their names appeared in the precinct register. Finally, the court held that plaintiff's failure to challenge timely two voters when they cast their absentee ballots without indicating the reason they voted absentee on the flap precluded his challenge after the election. See McGee v. Fuselier, 330 So.2d 383 (La. Ct. App. 1976).

Election Contests - Election Law/Mandatory or Directory

Menssen v. Eureka Unit District No. 140, 388 N.E.2d 273 (Ill. App. Ct. 1979)

Petitioners, citing numerous errors, omissions and failures by the school board to comply with state election laws, contested the validity of an election on a proposal for an increase in the educational fund rate. The lower court held that the election was valid, even though it recognized that many statutory guidelines had not been followed.

The court affirmed the lower court's decision stating that, although legal safeguards must be faithfully observed, literal compliance with formal steps should not be required if the spirit and intent of the law are not violated. Zbinden v. Bond County Community Unit School District No. 2, 117 N.E.2d 765 (1954). The court held that, though there were a number of statutory violations in this election, the school board's action can be characterized as inadvertent noncompliance with the legislative requirements. (These violations included omitting precinct boundaries in notice of election or failing to delineate them, amending legal notice of election at school board meeting and sending proper notice to board members and to newspaper, failing to obtain and preserve valid receipts in election, appointing election judges without a resolution authorizing the appointee to act as school board's agent and where election judges failed to open and exhibit the ballot boxes to the first voters but where these judges did inspect the ballot boxes prior to their use.) The court was persuaded in this decision by the belief that the integrity of the election was not in doubt and that the will of the people should not be thwarted by technical violations.

Election Contests - Illegal Votes

Hembree v. City of Stilwell, 597 P.2d 1218 (Okla. 1978)

Petition was filed in the supreme court for a writ invalidating an election or declaring that the winning candidate may not be determined with mathmetical certainty. The supreme court held that: (a) the irregularities which occurred before the election stemmed from the city officials' failure to comply with certain statutes and could form no basis for invalidating the election contest; and (b) the presence of illegal votes in sufficient number to eliminate his opponent's margin of three votes was sustained by the candidate's producing five persons who admitted they were not legal voters in the ward for the seat for which the election was being held.

Election Contests - Illegal Votes

Kiehne v. Atwood, 604 P.2d 123 (N.M. 1979)

Plaintiffs, candidate for office of county clerk, sued to invalidate defendant's election as county clerk. Election of defendant was held invalid after finding that six of the voters were not residents of the county and defendant appealed.

The supreme court affirmed in part, holding that: 1) An illegal voter forfeits his right of secrecy; 2) after failing the two-prong test to determine residency, six voters were found not to be residents of the county, thus voiding their ballots; and 3) it was mandatory that the voter swear to sign affidavits on the application and absentee ballot in the presence of the county clerk before the clerk could notarize the documents.

The court reversed in part, holding that; 1) Persons who alleged statutory reasons for applying and voting and showed reasonable grounds to sustain their good faith in applying for and voting by absentee ballot, should have their votes counted; 2) presence in the county on election day by a qualified absentee voter does not invalidate his vote; 3) the taking of absentee ballots by a county clerk on the weekend was a technical irregularity which did not threaten the purity of the electoral process; 4) delivery of completed absentee ballots by an agent of the voter to the county clerk's office is not sufficient deviation from the provisions of the absentee voter laws to void the votes in question; and 5) assistance of an absentee voter by the wife of a candidate for office does not violate any statute.

Election Contests - Illegal Votes

Pyron v. Joiner, 381 So.2d 627 (Miss. 1980)

The court affirmed the Special Tribunal decision of denying the losing candidate's petition to contest the election results of a Democratic primary election for Highway Commissioner.

The court held that the basis for deciding whether a new election should be called was not on whether the number of illegal votes exceeded the winning margin of votes (the winning margin of votes was 1,117 votes. The number of votes which were declared illegal totaled 5,097 and constituted 1.9% of the 267,709 total votes cast). The court held that in accordance with O'Neal v.

Simpson, 350 So.2d 998 (Miss. 1977), "if the election was held at the proper time and place, and under the supervision of competent persons, irregularities which concern merely the form of conducting it will not avail; it must be shown that legal votes have been rejected, or illegal votes have been received, and that because of the one or the other, or both, the result does not conform to the will of the voters, or uncertainty has been cast upon the result." The court stated that "inasmuch as the illegal votes cast were only 1.9% of the total votes cast...and inasmuch as the result was not changed nor was any doubt or uncertainty cast on the result being in conformity with the will of of the majority of the voters," the findings of the Special Tribunal were correct.

Election Contests - Illegal Votes

Simonetti v. Brick, 587 S.W.2d 16 (Ark. 1979)

Six days after the Democratic primary on May 30, 1978, the defendant was certified as his party's candidate for justice of the peace. His opponent filed a contest, alleging that six votes had been cast illegally, a trial was held in November at which the defendant was confirmed as the winner of the election, and the plaintiff appealed.

The appellant argued three points in favor of reversing the lower court's decision:

(a) After the contest period had expired, the appellant requested leave to amend her petition, and the court refused. On appeal, she claimed that the denial to amend was an abuse of discretion. Noting that the appellant's petition to amend contained no factual information about the allegedly illegal votes, the court upheld the trial court's denial.

(b) The appellant argued that the trial judge had erred in refusing to allow her to ask a particular witness how he had voted in the election. The witness in question had been subpeonaed by the defendant, who had rested his case without ever calling upon the witness to testify. After both plaintiff and defendant had rested their cases, the plaintiff called this witness to the stand, but the judge would not permit her counsel to ask the witness how he had voted. The court again upheld the trial court's ruling, not only because the plaintiff had already been denied petition to amend but because her counsel apparently had no idea how the witness had in fact voted, and was only taking a chance by questioning him after the court had already determined the vote count at 556 to 555 in favor of the defendant.

(c) Upholding the trial judge's decision not to reject the absentee vote of a man who had expected to be absent from his voting precinct on election day because of his work, the court rejected the appellant's narrow construction of a state statute which distinguishes between avoidable and unavoidable absence.

Because the appellant had failed to prove the error of the trial court's judgment, the court affirmed its decision in favor of the defendant.

Election Contests - Misrepresentation During Campaign

Scheibel v. Pavlak, 282 N.W.2d 8433 (Minn. 1979)

The court, recognizing that the Minnesota House of Representatives had exclusive constitutional authority to determine the eligibility of its members, issued an advisory opinion to the legislature concerning the election of a candidate to that body. The lower court had dismissed proceedings instituted by the voters which charged the candidate with knowingly permitting the distribution of a campaign brochure on his behalf which contained false information with respect to the voting and attendance record of the incumbent in violation of Minnesota statute 210A.04.

The court was aware of the long tradition of United States courts of refusing to offer opinions not binding upon the parties because such opinions subjected a proceeding arising in a court to modification, suspension, annulment or affirmation by a part of the legislative department of government before it would possess any definitive force. See Dinan v. Swig, 112 N.E. 91 (Mass. 1916); State ex rel. Smith v. District Court, 145 P. 721 (Mont. 1914); and Combs v. Groener, 472 P.2d 281 (Ore. 1970). Nevertheless, the court determined to advise the legislature of certain basic factual conclusions which would be limited in scope and would fall short of an opinion on the validity of the election, since it had heard the case and spent a great deal of time studying and deliberating its merits before becoming acutely aware of the institutional considerations counselling dismissal. Further, the challenged legislator had been seated and was voting, and his colleagues anticipated that the court would offer some assistance in the way of comment and analysis.

The court believed that the candidate had violated sec. 210A.04 and that this violation was 'deliberate, serious and material' within the meaning of sec. 209.02. The court noted that it was deliberate in the sense that the distribution of the statement as worded was intentional and was intended to affect the voting of the election. Effertz v. Schimelpfenig, 291 N.W. 286 (Minn. 1940). The court judged that it was serious because the distribution of 1,800-1,900 reprints in a single legislative district was far from a trivial amount.

Finally, the court stated that it was material because voting was the essence of a representative's position, and attacking voting performance was germane to one's conduct in the position. The court concluded that these findings did not resolve the case and that the legislature must decide whether the candidate acted with 'good faith' and whether the false statements had any influence on the election.

The court stated that a full decision on the propriety of any action in a case of this nature would be reserved until the situation presented itself again.

Election Contests - Recounts

Brunet v. Evangeline Parish Board of Supervisors of Elections, 376 So.2d 633 (La. Ct. App. 1979)

In an election contest, filed under secs. 18:1401 and 18:1451 of the Louisiana Revised Statutes, for the office of Evangeline Parish Police Juror, district seven, plaintiff alleged that there was a discrepancy of either four or five votes between the number of votes actually cast in election machines and the number of votes recorded on a list of voters. Plaintiffs also alleged that there was a malfunction in at least one of the voting machines that would have changed the result of the election. Appellant lost the election by two votes and the alleged error was sufficient to set forth a cause of action. The district court concluded that the plaintiff had failed to allege an error in the counting of the ballots and sustained the defendant's exceptions of no cause of action. Plaintiff appealed.

The court of appeals ruled that the allegation that a proper recount of the ballots would change the results of the election set forth that there was an error in the original count. The court concluded that, since the election was lost by two votes and that only two of the votes of several persons who tried unsuccessfully to vote for the plaintiff would have resulted in a tie, the petition alleged an irregularity that would have changed the result of the election. The petition was sufficiently specific to set forth a cause of action with respect to the election contest. The case was reversed and remanded.

Election Contests - Recounts

In Re Contest of 1979 General Election for the Office of District of Attorney of Washington County, Pa., 414 A.2d 310 (Pa. 1980)

Candidates, running for the office of state district attorney, appealed a lower court's ruling on over 2,000 challenged ballots after an election recount. The candidates challenged: 1) the decision with respect to ballots which were allegedly fraudulently or erroneously marked; and 2) the decision to invalidate ballots containing more than one mark in the straight-party columns.

The official ballot consisted of two major parts. The first, a party column, consisted of a list of the names of all of the political bodies or parties on the extreme left of the ballot. The other part of the ballot consisted of the names and offices for which named individuals, identified by party affiliation, were running. Both the Republican and Democratic parties had full slates of candidates for offices. The political body "Vincent Register of Wills" was represented by a single candidate, Josephine Vincent, candidate for the office of register of wills. There was no other person listed as a candidate for any other office under the party "Vincent Register of Wills." All of the double straight ballots, those containing a straight Republican or a straight Democratic vote and a vote for "Vincent Register of Wills," were invalidated during the recount. Both parties challenged these ballots.

Bigi, the Democratic nominee, contended that the ballots in question were improper because of the ambiguous format and argued that, despite this, voter intent on these ballots could be determined and that they should therefore be counted. The candidates also argued that the board of elections had a duty to provide adequate instructions on the ballot and to forbid the adoption of a political party or political body with names which contain the proper names of candidates in one-candidate political bodies.

Pettit, the Republican nominee, argued that counting on the double-straight ballots would create non-uniformity in the holding of elections as between districts where paper ballots are used and those which use voting machines. The candidate, relying on McCaffreys Appeal, 337 Pa. 552 (1940), and Shorter's Appeal, 325 Pa. 48 (1936), also argued that Pennyslvania law established that double-straight votes may not be counted.

The supreme court held that the errors made by voters on the ballots in question were the result of ambiguities created by the use of political body names containing the proper names of candidates in one-candidate political bodies along with the absence of complete and unambiguous instructions. Because of this, the ballots in question should have been counted. The court also held that, in the absence of proper instructions for the recording of votes, counting the double-straight ballots did not lead to non-uniformity in the holding of elections between districts where paper ballots are used and those using voting machines.

The court disagreed with the cases cited in Pettit's final agrument concerning the counting of double-straight ballots. The factors in the earlier cases were not the same as those in the present case.

Election Contests - School Bond

Frias v. Board of Trustees of Ector County, 584 S.W.2d 944 (Texas Ct. Civ. App. 1979). Certiorari denied U.S. Sup Ct. 12/10/79 (Doc. No. 79-663)

Plaintiff filed an appeal to contest a school bond election in which the majority of votes cast were in favor of authorizing the issuance of the bonds. The trial court upheld the election and the plaintiff appealed.

Appellant asserted that the trial court erred: 1) in not finding the entire election process a proper matter for inquiry in a bond election contest; 2) in finding that misleading statements and material misrepresentations of fact by school trustees and school employees made it impossible to ascertain the true will of a majority of the voters; 3) in not requiring the exclusion of all votes cast by disqualified voters; 4) in finding that corporate contribution in violation of Texas statutes were permissable; 5) in denying contestants' constitutional right of trial by jury; and 6) in dismissing the pro se contestants at a hearing on a plea in abatement.

The court of civil appeals affirmed the trial court's judgment and held that 1) in an election contest only matters that occurred on the day of the election and pertaining strictly to the election may be inquired into; 2) there was no proof of fraud, and no voters testified that they were misled, believed or let any misrepresentation affect their vote; 3) there were no illegal or fraudulent votes cast in the election; and 4) corporate contributions for the purpose of promoting passage of the school bond issue were permissible.

Election Contests - Statement of Canvass

Reed v. City of Montgomery, 376 So.2d 708 (Ala. 1979)

This election contest was instituted when the results of a city annexation election were held up after the chief inspector of the precinct informed the judge of probate that a mistake had been made in tabulating the final vote in the original statement of canvass. To rectify this error the inspector changed the original statement of canvass and the probate judge certified the election results based on the second statement. The city filed various petitions with the lower court to require the judge of probate to certify the election results according to the original statement of canvass. The lower court held that the judge of probate was required to certify the vote in accordance with the tabulation contained in the original statement of canvass. The decision was appealed.

The court affirmed, guided by Cosby v. Moore, 65 So.2d 178 (Ala. 1953), which stated that the canvassers are controlled by the returns of the inspectors and have no power to go behind them or inquire into fraud or irregularity. The court cited Ex parte Shepherd, 55 So. 627 (Ala. 1911), which held that it is a felony for any inspector to fail to deliver the certificate of result as delivered to him to the probate judge. The court also cited In State ex rel. Robinson v. Hutcheson, 171 S.W.2d 282 (Tenn. 1943), where the court stated that, once the inspectors certify the statement of canvass and seal and deliver the returns, they have no authority thereafter to add to, change or alter them or make a new return.

Election Contests - Special Taxing District

Hanrahan v. Alterman, 396 A.2d 272 (Md. Ct. Spec. App. 1979)

The court affirmed the lower court's decision which rejected appellant's contention that a village council election should be overturned on the grounds that it violated the state election code. The court held that the elections of the "quasi-municipal" corporation" known as Friendship Heights, a special taxing district exercising no political powers, were not regulated by the state election code, specifically that part of the code known as the "Fair Election Practices Act." Appellant based his challenge on the language of public local law sec. 66-4, which stated that election to village council "shall be held under and in accordance with the laws of the State of Maryland." The court concluded that, when the General Assembly of Maryland incorporated art. 33 (the state election code) into chapter 66-4 of the Montgomery County Code (public local law governing election to the village council), it was not the intent of the legislature to include municipal elections, in the absence of specific inclusion, within the "enormous regulatory framework of the Maryland Election Code...."

Election Contests - Timeliness

State ex rel. Kimmons v. City of Azle, 588 S.W.2d 666 (Tex. Ct. App. 1979)

The state of Texas initiated a quo warranto proceeding to challenge the authority of the city of Azle to annex certain land. The state particularly challenged Azle's status as a home rule city. The district court granted summary relief to the defendants and the state appealed. The court affirmed the decision of the district court, holding that since 1971 Azle has been a "duly incorporated city, first as a general law city and then, later, as a home rule city."

The state based its challenge on what the court determined to be an erroneous interpretation of the court's opinion in State ex rel. City of Azle v. City of Sanctuary, 467 S.W.2d 211 (Tex. Ct. App. 1971). Noting that the state committed itself in that case upon the relation of the city of Azle and was required to establish that Azle was not an incorporated city, but failed to do so, the court held that that case had no bearing on the present litigation; i.e., the state could not presently benefit from its past failure to prove Azle's lack of municipal status.

In its opinion, the court also referred to City of Azle v. Martin, 474 S.W.2d 687 (Tex. 1971), in which the city prevailed upon the state's attorney general to approve the issue of its revenue bonds, which resulted in the supreme court's finding that Azle has been an incorporated home rule city since 1971. In this appeal, the state contended that Azle lacked sufficient population for the valid election (in 1971) in favor of home rule. The court pointed to Texas statutes vol. 9, arts. 9.03 and 9.30 which require that an election be contested within thirty days, and noted that, apart from the question of timeliness, the state had introduced no evidence that the election was invalid. The court held that an election contest is a cause of action which can be created by statute only, that a contestant is bound to comply with that statute, and that a court may only consider such a case by and to the extent authorized by statute. See Johnson v. Stevenson, 170 F.2d 108 (5th Cir. 1948) and Bassel v. Shanklin, 183 S.W. 105 (Tex. Ct. App. 1916).

Because it was based on the contention that Azle was not properly a municipal corporation, the court dismissed the state's claim that Azle lacked the right to annex territory. Acknowledging that Azle had functioned as a home rule city since 1971, e.g., taxing and issuing bonds, the court judged that to invalidate Azle's status as a municipal corporation would be harmful and contrary to public policy.

Election Contests - Timeliness

State ex rel. Wilson v. Hart, 583 S.W.2d 550 (Mo. Ct. App. 1979)

The defeated candidate in a primary election for nomination for the office of alderman filed a petition to contest the election in the circuit court of the city of St. Louis. The contestee filed a motion to dismiss the petition, alleging improper service of process. Circuit court judge Hart overruled the motion to dismiss and indicated his intention to proceed with the case.

The contestee (now relator) filed a petition for a writ of prohibition with the court of appeals; he alleged that, because of improper service of process, the circuit court lacked jurisdication to try the case.

The court found that the right to contest an election exists only as defined by statute and noted that the election code (sec. 115-533 (1)) requires that a summons be served to a contestee immediately after a petition to contest is filed.

Because the purpose of the statute is to assure an early resolution of election contests, the court construed the statute to mean that the summons must be served on the same day that the petition is filed. The court supported its construction by citing a provision of the election code, (sec. 115-533 (3)), which allows the contestee only four days from the filing of the petition to file an answer. Since the election was held on February 6, 1979, and the petition to contest was filed on February 21, but the summons was not issued until February 26, in violation of the statute, the circuit court lacked jurisdication to proceed with the case.

The court cited the case of State ex rel. Craig v. Grimm, 542 S.W.2d 335 (Mo. Ct. App. 1976), to support its finding that proper service according to the law is necessary for the court to acquire jurisdication.

The court issued a permanent writ of prohibition, instructing the circuit court to dismiss the election contest petition.

Financial Disclosure - Elected and Appointed Officials

Snider v. Shapp, 405 A.2d 602 (Pa. Commw. Ct. 1979)

Petitioners, elected school district members, brought suit seeking injunctive and declaratory relief against implementation of a 1978 Pennsylvania law which they allege is unconstitutional, and the respondents filed preliminary objections. The Public Officials Ethics Law proscribes certain conduct involving conflicts of interest and requires candidates for public office, elected officials and certain appointed officials to file financial disclosure statements with the newly-created state ethics commission.

The respondents questioned whether the petitioners had standing in this case, and the court found that they were sufficiently affected by the law to justify standing to question its validity.

Among the petitioners' allegations is a claim that the vagueness of the act constitutes a violation of the due process clause of the fourteenth amendment. The court held that the petitioners' objections were limited to the invalidity of the law on its face since they offered no facts involving enforcement of the law. The court concluded that the law is neither sufficiently vague nor inconsistent to deny due process and that judicial interpretation must await the evidence of actual cases.

The petitioners claimed that the disclosure requirements of the law infringe upon their constitutionally-guaranteed privacy. The court defended the public's right to be informed of the fitness of individuals to serve in public office and to hold public trust, balancing that right against the office holder's right of privacy. Citing the case of Plante v. Gonzalez, 575 F.2d 1119 (5th Cir. 1978), the court noted that, when a law impinges upon an individual's right of privacy, the relevance of the information sought to the purpose of the legislation must be questioned, and the court must weigh the interest to be served against the interest infringed upon.

The court concluded that the disclosure provisions of the law do serve the overall purpose of the law, which is to "strengthen the faith and confidence of the people of the State in their government," and sustained the respondents' preliminary objection to the petitioners' claim.

Pointing out that elected school directors are subject to the law but that appointed school directors are not, the petitioners alleged that the law violates the equal protection and due process clauses of the fourteenth amendment. The court answered this allegation by asserting that the equal protection clause does not deny the state the power to treat different classes of persons differently, but only requires that classifications be reasonable, "having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced will be treated alike." Acknowledging that all candidates for elected office and all elected officials, whether compensated or not, are subject to the law, while only certain appointed officials who receive compensation are required to comply with the law, the court held that the distinctions had not been drawn irrationally. Allowing that these distinctions result in some practical inequality, the court asserted that equal protection is not denied where there is reasonable basis to justify the legislative classification. See Dandridge v. Williams, 397 U.S. 471.

Judges McPhail and Mencer dissented, both on the question of equal pretection. Judge Mencer noted that all school directors are appointed in the city of Philadelphia, noting that the purpose of the law, to strengthen the faith of the people in their government, effectively stops at Philadelphia. Judge McPhail insisted that, if the purpose of the law is to be served, it must apply to all public officials.

Finally, the court dismissed the petitioners' allegation that the law interferes with free suffrage in that it limits the field of candidates from which voters may choose, defending the validity of statutes which establish qualifications for elective office.

The court sustained the preliminary objections of the respondents and dismissed the petitioners' amended petition for review.

Government Employees - Political Activities

Council # 11, American Federation of State, County and Municipal Employees v. Michigan Civil Service Commission, 292 N.W.2d 442 (Mich. 1980)

In this case, the American Federation of State, County and Municipal Employees (AFSCME), the civil service employees' union, brought against the Civil Service Commission challenging 1976 P.A. 169, M.C.L. sec. 15.401 et seq., M.S.A. sec. 4.1702(1) et seq. and Rule 7 of the Michigan Civil Service Commission, which regulate the political activities of employees of the state civil service. The trial court upheld both the statute and the Civil Service Commission rule and both parties appealed.

The court of appeals upheld 1976 P.A. 169 as it applied to the state classified service but found no compelling state interest to justify the prohibition of civil service employees from engaging in political activities. The court struck down Rule 7 of the Civil Service Commission as being overbroad. Because plaintiff was discharged from his job without a showing that his political activity hindered his job performance, the court reversed and remanded the lower court's ruling.

The supreme court affirmed, holding that there is no provision in the constitution which grants the Civil Service Commission the power to regulate the off-duty political activities of civil servants (Rule 7). The court also held that 1976 P.A. 169 applies to employees of the civil service, since it does not conflict with any provision of the Michigan Constitution.

Initiative and Referendum - Ballot Clarity and Objectivity

Thirty Voters of Cty. of Kauai v. Doi, 599 P.2d 286 (Hawaii 1979)

In this election contest the electorate as a whole challenged election procedure and the ballot format of an initiative proposal which questioned whether building height limits should be maintained. Plaintiffs contended that the failure of election officials to permit voters to view the ballot outlay after the wording had been changed violated HRS sec. 11-116 and that the ballot itself was unclear and misleading.

The court upheld the results of the election on the grounds that plaintiffs had not taken the opportunity to correct any irregularities in the election process or in the ballot prior to the election itself. See Martin v. Porter, 353 N.E.2d 919 (Ohio 1976), which upheld an election, absent fraud and irrespective of procedural violation, when the opportunity to correct the irregularities had not been taken before the counting of votes. The court noted that the election could not be invalidated on the basis of a violation of HRS sec. 11-116 because there had been no substantive change in the ballot form and there was substantial compliance with the section. The newly worded sample ballot had appeared in a local newspaper of general circulation a full month before election. The court held that the new language only modified the manner in which approval or disapproval could be demonstrated; the new language allowed the voter to choose between "For" or "Against" rather than between "Yes" and "No."

Initiative and Referendum - Single-Subject Requirement - Lobbyist Rights

Fair Political Practices Commission v. Superior Court, 25 Cal.3d 33 (1979). Certiorari denied U.S. Sup. Ct. 1/21/80 sub nom California Fair Political Practices Commission v. Institute of Governmental Advocates (Doc. No. 79-772)

In this case the court granted a petition of the Fair Political Practices Commission by issuing a writ of mandate directing the trial court to vacate virtually all of its judgment. The lower court had enjoined enforcement of the Political Reform Act, an initiative measure, on the ground that it violated art. two, sec. eight, subd. (d) of the California Constitution, which provides that "an initiative measure embracing more than one subject may not be submitted to the electors or have any effect." The lower court also found portions of the act invalid on the grounds that they violated equal protection guarantees and first amendment associational freedoms when lobbyists were prohibited from making any contributions and substantially interfered with the right to petition the government when lobbyists were required to register and to submit reports disclosing receipts and expenditures.

The initiative addressed the subject of elections and different methods for preventing corruption and undue influence in political campaigns and governmental activities. The initiative contained eleven chapters with subjects ranging from general provisions to limitations on campaign spending, regulating lobbyist activities, establishing rules relating to voter pamphlet summaries of arguments and regulating ballot position of candidates.

The court, guided by numerous cases including Barber v. Galloway, 231 P. 34 (1924), and Treat v. Los Angeles Gas Corp., 256 P. 477 (1927), concluded that "[C]onsistent with our duty to uphold the people's right to initiative process, we adhere to the reasonably germane test and, in doing so, find that the measure before us complies with the one subject requirement." The court, following the teachings of Buckley v. Valeo, 424 U.S. 1 (1976), also declared a provision which prohibited a lobbyist from making a political contribution either for himself or another as unconstitutional. The court held that the restrictions placed on the right of an individual to contribute money to political activities "is subject to the closest scrutiny" and that "[w]hile either apparent or actual political corruption might warrant some restriction of lobbyist associational freedom, it does not warrant total prohibition of all contributions by all lobbyists to all candidates."

The court also held that a lobbyist's right to petition the government for a redress of grievances is not directly limited or restricted because of registration and reporting requirements and does not constitute a substantial interference with the exercise of petition and speech rights. See United States v. Harriss, 347 U.S. 612 (1954), and Brown v. Superior Court, 5 Cal.3d 509 (1971).

Finally, the court decided that the transaction reporting requirements, which are not directly related to the extent of lobbying activities but are determined mainly by lobbyist and employer transactions with others, were invalid because they constituted an unjustified, significant interference with the fundamental right to petition. See City of Carmel-By-the-Sea v. Young, 466 P.2d 225 (1970).

Primary Elections - Blanket System

Heavey v. Chapman, 93 Wash.2d 700 (1980)

Plaintiffs, the Democratic Party and two of its members, challenge the validity of the blanket primary system as stated in RCW 29.18.200. This statute states that all properly registered voters may vote for their choice at any primary election, for any candidate for each office, regardless of political affiliation and without declaring a party preference. Plaintiffs claim that the blanket primary unconstitutionally restricts the plaintiffs' right of association under the state and federal constitutions.

The court held that RCW 29.18.200 and those statutes implementing blanket primaries did not unconstitutionally restrict the plaintiffs' right of association. The court held that plaintiffs' failure to even attempt to show a substantial burden to their right of association is dispositive of the case. The court held that certain compelling state interests which support a blanket primary are: to allow a voter to keep party identification, if any, secret; to allow the broadest possible participation in the primary election; and to give a voter a free choice among all candidates in the primary.

The court cited Rosario v. Rockefeller, 410 U.S. 752 (1973), and Nader v. Schaffer, 417 F. Supp. 837 (D. Conn. 1976), aff'd, 429 U.S. 989 (1976), as being concerned with the exclusion by statute of voters from participating in party primaries.

These cases held that a state may institute a closed primary system, but neither establishes a mandatory duty that a state must have closed primaries nor do they forbid a blanket primary.

The court concluded that the state interest in allowing voters to support the candidates of their choice in a primary can be achieved only by the blanket primary which allows complete voter freedom in alternating votes between parties, since an open primary, on the other hand, restricts a voter to candidates of only one party. The blanket primary is the least drastic means available to promote this legitimate state interest.

Primary Elections - Open Primary

State ex rel. La Follette v. Democratic Party, 93 Wis.2d 473, 287 N.W.2d 519 (1980). Certiorari granted 7/2/80 U.S. Sup. Ct., sub nom. Democratic Party of the U.S. v. Wisconsin, (Doc. No. 79-1631).

The state attorney general requested that the court take original jurisdiction to grant declaratory and injunctive relief from the position taken by the Democratic Party of the United States of America (National Party). The National Party only allows those delegations who had complied with all of the National Party rules, including rule 2A, to be seated at the Democratic Convention. Rule 2A requires that voters in the primary declare their preference for the Democratic Party and have that preference publicly recorded. The Wisconsin statutes allow each voter to make a choice of party in the privacy of the voting booth. It is this "private declaration" of party preference in the voting booth as compared with a public, recorded declaration that characterizes the Wisconsin presidential preference vote as an "open primary." The National Party contends that the open primary permits non-Democratic voters to have a significant impact on the selection of a Democratic presidential candidate and that the open primary violates its constitutionally guaranteed freedom to associate for political purposes.

The court held that the open primary did not impose an unconstitutional burden on the associational rights of the National Party and that the state had a compelling state interest in having a primary and in not requiring that voters not publicy declare their party preference and have that preference publicly recorded. The court said that the primary served the very important function of being a part of the electoral process for electing the President and that the state had a legitimate interest in protecting the overall integrity of the candidate selection process. This interest included protecting the associational rights of the party: protecting the rights of its citizens to vote, to associate for political purposes, and not to disclose their party preference; and to ensure that the primary and political party participation are conducted in a fair and orderly manner.

The court states that, once the state provides a primary and makes the vote available to some persons, the right of all persons to vote becomes a basic one under the Constitution. Rosario v. Rockefeller, 410 U.S. 752 (1973).

The court acknowledged the interest of the party to protect the integrity of the primary as a party function and to protect its associational interests 'from intrusion by those with adverse political principles.' See Ray v. Blair, 343 U.S. 214 (1952). But the court stated that the Democratic Party had failed to present a factual basis to support its assertion that declaration of party preference was a necessary and effective way to prevent adherents of other parties and independents from voting on the National Party's ballot.

The court also stated that the sole function of the Wisconsin presidential preference primary was to apportion the number of delegates among the presidential candidates on the ballot for that party and that the process of selecting the convention delegates in Wisconsin was under the control and direction of the State Party.

Finally, the court stated that legislative safeguards against a voter participating in another party's primary had been established 1) by allowing a voter to vote on only one ballot (a voter would have to sacrifice his or her opportunity to participate in his or her own party's selection process if the voter voted in another party's primary); and 2) by allowing a voter to mark the ballot 'None of the names shown,' thereby expressing a preference for an uninstructed delegation.

Certiorari granted by the U.S. Supreme Court, 7/2/80 (Doc. No. 79-1631)

Qualifications to Vote - Convicts

Crutchfield v. Collins (Tenn. Ct. App. October 6, 1980)

This suit relates to the right to vote of three plaintiffs convicted of infamous crimes. The court affirmed the decision of the lower court and declared that there is no authorization for deprivation of voting rights of any citizen convicted of an "infamous crime" since the time that the 1972 amendment of Tennessee Code Annotated sec. 40-2712 went into effect.

Prior to the amendment, sec. 40-2712 required that, upon conviction of certain specified crimes, the court was required to judge the defendant infamous and to disqualify the defendant from voting. The 1972 amendment stated that, upon conviction of certain crimes, it would be part of the judgment that the defendant be infamous but the amendment no longer stated that the defendant be disqualified from voting.

The court stated that the clear meaning of art. I, sec. 5, and art. IV, secs. 1 and 2 of the Tennessee Constitution is:

> The State shall have no power to deny any citizen the right to vote except that the legislature may provide in advance that loss of voting rights shall be part of the punishment for crimes declared in advance to be infamous.

The court determined that, this being true, there is no authorization for deprivation of voting rights of any citizen convicted of an "infamous crime" since" the 1972 amendment.

The court noted that the decree of the lower court relates only to the rights of the three plaintiffs under their peculiar circumstances.

(This case is associated with Tate v. Collins, No. 80-2381-M (W.D. Tenn. August 27, 1980). See summary in Federal Court Cases).

Special Elections - Vacancy of President of City Council

City of Atlanta v. League of Women Voters of Atlanta-Fulton County, 262 S.E.2d 77 (Ga. 1979)

The court affirmed a lower court decision which granted an order of mandamus absolute requiring the city council of Atlanta to call a special election to fill a vacancy existing in the office of president of the city council.

The court held that, in accordance with Code Ann. sec. 89-501, (7), a vacancy existed in the office as of August 27, 1979, the day the elected president ceased to exercise any of the powers and duties of the office (he and his staff removed all of his personal belongings from his desk and offices at city hall on that day) and the day on which the elected president delivered to the members of the council his letter of resignation "effective immediately subject to the will of the council."

The court held that the city council resolution which would delay the acceptance of the resignation until October 15, 1979, was not valid. The effect of this delay would be that the city council, rather than than electors, would fill the office because, under sec. 5-103 of the city charter, the vacancy would have occurred within two years of the next general election to be held on October 16, 1981. The court held that sec. 5-103 of the city charter requires the council to call within thirty days from August 27, 1979, a special election to fill the vacancy.

The court held that, though more than thirty days had expired since the date of the vacancy, making it impossible to call a special election within thirty days from that date, the case was not moot because the petition for mandamus was filed within thirty days following August 27, 1979. Skrine v. Kim, 249 S.E.2d 534 (1978).

The court stated that, though the city issued to checks payable to the former president, which were cashed by him and which the city contends proves he received a salary as president of the city council through October 15, 1979, does not affect the judgement of the court. The court stated that judgment was not predicated upon resignation or abandonment of office; rather that the office was vacant when the former president ceased performing the duties of office within the meaning of Code Ann. sec. 89-501(7).

Boards and Commissions - FCC Ruling - Equal Broadcasting Opportunities

In Re Complaint of Barnstead v. Station WGBH-TV, Boston, Mass., 72 FCC 2d 499 (1979)

A candidate for the House of Representatives filed a complaint with the Federal Communcations Commission (FCC) alleging that a violation of equal opportunity to use a broadcasting station as specified in 47 U.S.C. sec. 315 had been committed. Complainant also claimed that reasonable access to a broadcasting station by a legally qualified candidate for federal elective office on behalf of his candidacy as specified in 47 U.S.C. sec. 312(a) (7) had not been provided. Complainant referred to an hour-long program about Congressman Thomas P. O'Neill in which the Congressman appeared throughout. Complainant contended that at the time of broadcast the Congressman and he were unopposed candidates for the nominations of the Democratic and Republican Parties, respectively, for the same Congressional seat and that the licensee did not give him 'equal time' or 'mention.'

The Commission upheld the Broadcast Bureau ruling that, since it was possible for others to contest either candidate for the party's nomination, the complainant was not an 'opposing candidate' entitled to 'equal opportunities' under sec. 315. A violation of the Fairness Doctrine had not been committed because complainant had failed to specify any controversial issue of public importance that had been discussed during the program and because the Doctrine is not applicable to a 'use' by a candidate. The Commission referred to Kay v. Fcc, 443 F.2d 638 (D.C. Cir. 1970), which upheld the Commission's ruling that generally those seeking the nominations of different parties for the same public office are not 'opposing candidates' entitled to 'equal opportunties.' Prior to a primary election only candidates seeking the same party nomination are opposing candidates.

The Commission stated that complainant had not shown that this interpretation operated in an unfair manner to him in that his campaign for his party's nomination was prejudiced. In addition, this interpretation allows a broadcast licensee to serve the public interest more fully in some situations by deciding to devote more time to a hotly contested primary race than to campaigns with only one candidate seeking the nomination. See The Law of Political Broadcasting and Cablecasting, 69 FCC 2d 2209, 2238 (1978).

Boards and Commissions - FCC Ruling - Equal Broadcasting Opportunities

In Re Complaint of Brown for President Committee v. National Broadcasting Company Inc., 75 FCC 2d 609 (1980)

In a complaint filed before the Federal Communications Commission (FCC) the Brown for President Committee seeks equal opportunities to broadcast on NBC on January 20, 1980, based on the scheduled appearance of President Carter on the January 20, 1980, segment of NBC's "Meet the Press" program. The committee complains that, by scheduling President Carter one day before the Iowa election, "NBC has engaged in a type of 'per se' unfairness" that requires that equal opportunities be extended to other candidates. The complainant claimed that even established interview programs such as "Meet the Press" may lose its status as a bona fide news interview program if they violate the public interest by presenting candidates in a way that will have an "inevitable impact on the viewing electorate."

The Commission denied the complaint. The Commission based this denial on the failure of the complainant to show that NBC was motivated by a desire to give the President an advantage in promoting his candidacy rather than on NBC's good faith journalistic judgment. The Commission relied on Law of Political Broadcasting and Cablescasting, 69 FCC 2d 2209 (1978), for determining whether a given news interview is bona fide and therefore exempt from equal opprotunities by asking the following questions: (a) does the interview take place on a bona fide news program? If so, the interview is exempt regardless of its subject matter, the type of person interviewed or whether the news program always contain interviews; (b) if the interview does not take place on a bona fide news program, does it take place on a bona fide news interview program?

In ruling on whether a program is a news interview program, the Commission has considered the following factors: (1) whether it is regularly scheduled; (2) how long it has been broadcast; (3) whether the broadcaster produces and controls the program; (4) whether the broadcaster's decisions on the format, content and participants are based on his reasonable, good faith journalistic judgment rather than on an intention to advance the candidacy of a particular person; and (5) whether selection of persons to be interviewed and topics to be discussed are based on their newsworthiness.

The Commission also stated that, based on the findings in Chisholm v. Federal Communications Commission, 538 F.2d 349 (D.C. Cir. 1976), granting the Brown Committee's petition would not be consistent with the intent of Congress in enacting the news exemption. The Commission was especially persuaded by NBC's argument that calling appearances just before local primaries or caucuses not bona fide because of their timing would severely hamper the ability of the networks to cover national news due to the large number of local primaries and caucuses.

Boards and Commission - FCC Ruling - Equal Broadcast Opportunities

In Re Complaint of John F. Danato v. New Jersey Public Broadcasting Authority, 73 FCC 2d 808 (1979)

Two petition were filed for reconsideration of a November 4, 1977, Memorandum Opinion and Order in which application for review were denied of the New Jersey Public Broadcasting Autority's (NJPBA) rebroadcast of a debate between two candidates for governor of New Jersey. The rebroadcast was not exempt from the "equal opportunities" provision of sec. 315 of the Communications Act.

Independent candidate for governor filed a complaint stating that a debate between Democratic and Republican candidates was filmed by the NJPBA and later broadcast in its entirety that same evening and rebroadcast on Sunday - two and one-half days later - and that his timely request for "equal opportunities" under sec. 315 was denied by the licensee. The NJPBA denied the allegation, saying that the rebroadcasts were exempt under sec. 315 (a) (4) - "on-the-spot coverage of a bona fide news event."

The Federal Communications Commission determined that the rebroadcast of an event held two and one-half days later was not "on-the-spot coverage" and therefore does not qualify for sec. 315 (a) (4) exemptions. "On-the-spot coverage" implies an element of timeliness and should not be extended beyond twenty-four hours.

Boards and Commissions - FCC Ruling - Equal Broadcasting Opportunities

In Re Complaint of John J. Marino v. Station WCVB-TV, Boston, 71 FCC 2d 311 (1979)

Petition was filed for reconsideration of a Federal Communications Commission (FCC) ruling dated November 2, 1978, by Boston Broadcasters, Inc. (licensors of WCVB-TV), which stated that the Democratic candidate for the House of Representatives was entitled to equal broadcast time as specified in 47 U.S.C. sec. 315.

Candidate, a potential Democratic nominee, filed a complaint with the FCC, which stated that the Republican nominee for reelection had appeared during the licensee's coverage of the September 19, 1978, primary election and that her appearance was not exempt from the "equal opportunities" requirements of sec. 315 of the Communications Act.

In a ruling, the Broadcast Bureau denied the complaint and stated and that only "legally qualified candidates," those who have qualified for a place on the ballot, are entitled to the "equal opportunties" requirement of sec. 315. Since complainant was seeking opportunities equal to those granted a candidate, he bears the burden of proving that he was a legally qualified candidate in opposition. Because the complainant failed to show that he was a legally qualified candidate in opposition, no further action was appropriate.

A letter of proof of candidacy from the Masschusetts Director of Elections was sent to the FCC and complainant was declared entitled to "equal opportunities" as those given his opponent. Petition for reconsideration was then filed by the Broadcast Bureau.

The FCC affirmed the ruling and denied the petition for reconsideration regarding the complainant's status of a "legally qualified candidate" in light of the determination made by the Massachusetts Director of Elections.

Boards and Commissions - FCC Ruling - Equal Broadcast Opportunities

In Re Request of National Citizens Committee for Broadcasting, 75 FCC 2d 650 (1979)

Petitioners filed a request for declaratory ruling and a petition for rule making to ask to declare that Ronald Reagan is a legally qualified candidate for the Republican nomintion for President under sec 73. 1940 (a) of the Federal Communications Commissions's (FCC) Rules. The petition for rule making also concerns sec. 73. 1940 (a), about which petitioners claim that it should be amended to include individuals who are seeking a party's Presidential nomination whether they have "publicly announced" the nomination or not.

Petitioners contend that Ronald Reagan should be a legally declared candidate despite his failure to issue an announcement of candidacy. Petitioners argued that it was clear that Ronald Reagan intended to seek the Presidential nomination for the following reasons: 1) a senator acknowledged Reagan's nomination on national television; 2) Ronald Reagan consented to the senator's chairing a "Reagan for President Committee" in a letter; 3) a statement of organization was filed with the Federal Election's Commission (FEC) by the "Reagan for President Committee"; 4) failure by Reagan to answer a notice sent by the FEC stating that he would be deemed a candidate unless withdrawing within thirty days; and 5) commentaries were broadcast by Reagan providing him with extensive public exposure.

The process of becoming a legally qualified candidate consists of: 1) announcing publicly; 2) being qualified for the office; and 3) qualifying for a place on the ballot or by making a substantial showing. The primary purpose of section 315 of 47 U.S.C. is to prevent broadcast licensees from giving favored coverage to one candidate over another. Since sec. 315 only applies to legally qualified candidates, a clear-cut standard for determining whether a person is a candidate within the meaning of this section is paramount.

Petitioners have not shown that Reagan has qualified for any state primary nor have they shown that Reagan has made a "substantial showing of bona fide candidacy" in any particular state. Therefore, he has not made a public announcement. Also, the Reagan committee's filing of a statement of organization with the FEC and Reagan's failure to respond to a notice sent by the FEC do not constitute evidence that he has publicly announced his intention to run for nomination.

SECTION V - STATE ATTORNEY GENERAL OPINIONS

CALIFORNIA - Attorney General George Deukmejian

Ballots - Absentee - Number 79-515, issued 8/22/79

Any person, including candidates and members of a candidate's campaign organization, may distribute applications for absentee ballots.

Absentee ballots delivered by the elections official pursuant to Elections Code sec. 1007 must be delivered to the voter in person or by mail and may not be given to third parties for delivery to the voter. These absentee ballots must be returned by mail or by the voter in person and may not be returned by a third person though authorized by the voter to make the return. In certain hardship cases, as authorized by the Elections Code sec. 1017, absentee ballots may be delivered to an authorized representative of the voter, who may be a candidate or member of a candidate's campaign staff.

FLORIDA - Attorney General Jim Smith

Campaign Financing - Contributions - Disclosure - Number AGO 080-81, issued 8/25/80

Provides that in accordance with the Campaign Financing Statutes the principal place of business of any individual contributor must be reported.

Candidates - Qualifications - Judicial Office - Number AGO 080-50 issued, 5/22/80

It is unnecessary and improper for the secretary of state to inquire into the veracity of a candidate's oath, filed with the Division of Election, which asserts that he is qualified to be a candidate for judicial office. Once a candidate states his compliance under oath, the secretary's ministerial determination of eligibility is at an end.

Governmental Employees - Dual Officeholding - Number AGO 080-12, issued 2/7/80

An elected municipal officer who serves as a member of a Metropolitan Planning Organization as provided by sec. 334.215, is not in violation of the dual officeholding prohibition of article II sec. 5(a), state const. The additional duties as a member of an M.P.O. are placed upon the municipal officer by the state legislature and are not inconsistent with the municipal duties already being performed.

Governmental Employees - Dual Officeholders - Number AGO 080-16, issued 2/26/80

Unless judicially or legislatively determined otherwise, neither the constitutional dual officeholding prohibition nor the common law doctrine on incompatible offices prevents a legislator and chairman of the House Higher Education Committee from holding office and serving as a member of the Board of Trustees of a community college district.

Governmental Employees - Members of Executive Committee of Political Party - Number AGO 080-35, issued 4/17/80

Until judicially or legislatively determined to the contrary, state employees within the career service system may not run for or hold office as members of a county or state executive committee of a political party. F.S. sec. 110.233(4).

Government Employees - Resign-to-Run Law - Number AGO 079-81, issued 9/11/79

Defines "subordinate personnel as used in sec. 99.012, chap. 79-391, Laws of Florida, as an appointed officer who is under the control and supervision of another who is his superior. Considers that neither the Resign-to-Run Law nor its 1979 amendment applies to a school teacher who seeks to qualify as a candidate for either the district school board or school superintendent. Also considers that the leaves of absence without pay which certain officers are required to take under the provisions of ch. 79-391 should begin on the day they qualify for election to other offices, the terms of which run concurrently with or overlap the terms of the offices they currently hold.

Government Employees - Resign-to-Run Law - Number AGO 079-82, issued 9/17/79

A member of a city zoning board, assuming such a member is an officer within the meaning of the Resign-to-Run Law, may not, by forfeiting the salary which is provided his office by ordinance, avail himself of the exception provided in sec. 99.012(5) and thereby qualify for election to another public office without complying with the resign-to-run requirements of secs. 99.012(2) and (3).

Government Employees - Resign-to-Run Law - Number AGO 080-1, issued 1/7/80

Since a coordinator of exceptional education is an employee rather than an officer and since only officers are subject to the command of the Resign-to-Run Law, it follows that a coordinator of exceptional education is not required by that law to resign his job prior to qualifying as a candidate for the office of Superintendent of Schools.

Special Elections - Recall Elections - Number AGO 080-75, issued 9/19/80

A municipality may not expend public funds to institute and prosecute a legal action to test the legal sufficiency of the allegations contained in a recall petition filed against one of the members of the city commission. Where municipal funds are improperly and not in good faith expended for such purposes, any member of the governing body who voted to so expend such funds may be held personally liable for such expenditure.

INDIANA - Attorney General Theodore Sendak

Campaign Financing - Lottery - No. 80-1, issued 3/14/80

A fund-raising function at which a large sum of money and other door prizes were allegedly awarded to ticket holders is outlawed by the Indiana Constitutional prohibition against lotteries and is a violation of Indiana statutes which outlaw gambling and lotteries as a form of gambling. Such violations are a matter which can be fully addressed by those whose authority is more than advisory (which is what an Attorney General opinion is) or by the general public through the courts or through constitutional amendment.

MASSACHUSETTS - Attorney Genral Francis Bellotti

Ballots - Public Policy Questions - Number 80-81-6, issued 9/10/80

The term "public policy" should not be given a restrictive meaning. Problems are questions of "public policy," and may be submitted to the voters, if they are fit subjects for lawmaking and if they are important public matters in which every citizen of the Commonwealth would have an interest, even if such questions concern a small geopraphic area. Several "public policy" questions were listed. Each question asked how a state senator or representative from a specific district should vote on an issue; e.g., eight questions concern a moratorium or restriction of construction or licensing of certain nuclear power plants, one question each concerns: 1) a resolution proposing that the President of the U.S. propose to the Soviet Union a mutual nuclear weapons moratorium; 2) prohibition of the storage and transportation of nuclear waste within the district; 3) type of apportionment scheme to use to elect a city council in the City of Boston; 4) whether abortions should be paid for by the Commonwealth; 5) prohibition of certain above ground high voltage power lines; 6) preservation of Prowse Farm; 7) demolition of Haverhill Parking Garage; 8) federal government policy on spending--new military programs versus funds for civilian needs; and 9) provisions for the use of refundable deposit on soft drink and beer containers.

Campaign Financing - Corporate - issued 11/6/80

Massachusetts General Laws, chap. 55, sec. 8, prohibits any corporate expenditure or contribution of anything of value specifically to promote or oppose a candidate for state, county or local political office and that the law does not allow corporations to circumvent the prohibition by forming and administering PAC's. It does not, however, restrict the first amendment freedoms of individual corporate officers, stockholders or employees to participate in such political activities, not does it ban corporate exepnditures in the normal course of business which are incidental to the internal dissemination of political views through house organs or newspapers.

VIRGINIA - Attorney General Marshall Coleman

Advertising and Solicitation - Author Identification - Number 5:41/150, issued 12/19/79

The obligation of the electoral board is to report to the commonwealth's attorney alleged violations of sec. 24.1-277, which requires author identification of campaign literature. Violation is a misdemeanor which does not result in the voiding of any election.

Ballots - Absentee - Number 5:41/150, issued 5/19/80

A student who is enrolled abroad in an organized course of university study, as for a degree, and who is otherwise qualified to vote fulfills the Virginia requirement for overseas residence caused by employment (in the sense of purposeful activity) and is entitled to register by absentee application.

Ballots - Death or Withdrawal of Candidate - issued 8/18/80

There is nothing in secs. 24.1-158 and 24.1-159 of the Virginia Code which prevents the naming of new candidates for President or Vice-President on the November ballot in the event a prior candidate dies or withdraws. The names of the candidates for President and Vice-President are merely identifying designations on the November ballot. The candidates for electors are the direct candidates on that ballot. In the event a prior independent candidate dies or withdraws, the candidates for electors of that candidate are entitled to furnish the name of a new independent candidate for President or Vice-President. The deadline for submitting the names of all candidates for President and Vice-President, under most circumstances, is noon of the sixtieth day before any election for the electors.

Ballots - Voting Machine Write-In - issued 10/22/80

Under art. II, sec. 3 of the Virginia Constitution (1971) and sec. 24.1-205 of the Code of Virginia (1950), no special provision need be made for write-in votes on the presidential voting-machine ballot presently in use.

Corrupt Practices - Willful Violation of Fair Election Practices Act - Number 5:41/173, issued 1/24/80

Under secs. 24.1-262 and 24.1-263, it is the obligation of the electoral board to report alleged violations of the Fair Election Practices Act to the Commonwealth's attorney and to cooperate in the investigation and prosecution of the violations.

Section 52-8.2 is not a bar to investigation of alleged violations of the Fair Election Practices Act, although it is a bar to an investigation by the State Police's Division of Investigation, absent compliance with the conditions stated in the statute.

Governmental Employees - Dual Officeholders - issued 9/15/80

In accordance with art. VII, sec. 6 of the Virginia Constitution, a town council may not elect a member of council as town clerk or treasurer.

In accordance with sec. 2.1-349(a)(2), the spouse of a member of a town council may serve as treasurer of the town but under sec. 2.1-349(a)(1) a spouse is prohibited from serving as clerk to the extent that the town clerk also serves as clerk of the governing body.

Governmental Employees - Dual Officeholders - issued 10/6/80

Art. VII, sec. 6 of the Virginia Constitution does not prohibit a town council from assigning the mayor's duties to one of the council members as a president pro tempore during the temporary absence of the mayor.

Initiative and Referendum - issued 9/2/80

A county may hold a referendum on the Sunday Closing Law on the day of the general election in November 1980, under sec. 15.1-29.5, even though the county held a prior referendum on the same issue in December 1978.

Initiative and Referendum - School Board Selection - Number 5:41/173, issued 7/24/80

A referendum relating to an alternate method of selecting the county school board can be held only every four years. This stipulation applies whether the referendum is ordered through a resolution of the board of supervisors or because of voter petition.

Political Parties - Ballot Count Representatives - Number 5:41/135, issued 10/17/79

Sections 24.1-222 and 24.1-137 do not speak of party or candidate representatives examining voter machine counters, printed return sheets and the statement of results prepared by the officers of elections. Rather, these sections provide that certain things (placing seal on ballots, packaging ballots for precincts, opening and counting ballot packages, emptying ballot boxes prior to voting and others) are to be announced and done by the officers of election in the presence of, and witnessed by, the representatives.

STATE ATTORNEY GENERAL OPINIONS

Political Parties - Election Officers - Number 5:41/150, issued 12/19/79

Sections 24.1-105 and 24.1-106 require that officers of election be competent citizens, qualified voters and of good moral character but does not mention party membership, although there is mention of party representation. Therefore, an electoral board would be allowed to appoint an independent to this post.

Primary Elections - Fill Vacancy - Number 5:41/173, issued 4/14/80

The political party of a city may not require a direct primary to nominate candidates to fill vacancies where no regular primary has been set to nominate candidates for the ensuing general election.

Residence Requirement - Commonwealth Attorney - issued 9/22/80

A Commonwealth's attorney who must have resided in his county at the time of his election is also required to remain a resident of the county as a condition of holding office. The procedure for the filling of vacancies in county offices is stated in § 24.1-76 (appointment to fill certain vacancies; writ of election).

Qualifications to Vote - Felons - Number 5:41/150, issued 6/27/80

The statutes from other states which restore the civil rights of certain convicted felons are considered appropriate authority under art. II of the Virginia Constitution. Persons covered under these statutes are entitled to vote in Virginia if otherwise qualified. When a conditional pardon is received, it is assumed that restoration of civil rights is also conditional; therefore, that individual would not meet the Virginia constitutional requirement. It would be appropriate to ask officials in the other state to certify that the rights have been restored. When a state does not have a certification process, the facts in each case must help determine what civil rights that person enjoys.

WEST VIRGINIA - Attorney General Chauncey H. Browning, Jr.

Day for Holding Election - issued 3/7/80

Even though a city's regular election is scheduled for the same day as a state primary election and that conflict presents certain logistical problems, the city is required to hold its regular election on that day. Present law provides that any election will be void if it is required to be held at a particular time but is held at another time. A different city election day can be ordered by a court of competent jurisdiction or the cities can amend their charters in time to fix a different date. Persons presently holding municipal offices may remain in office until their successors are elected or appointed and qualified according to law.

Registration - Thirty Day Deadline Before Election - issued 3/21/80

Qualified voters may register to vote on May 5 and may vote in the June 3 primary election. Although there is an apparent conflict between various sections of the code, the supreme court generally construes election laws liberally. The reason for such a liberal interpretation is so that as many persons as possible are given the opportunity to exercise their right to vote if such an interpretation does not open the door to election fraud, mischief or abuse. Whether such votes are challenged and, if challenged, whether they will be counted is a decision for a court of competent jurisdiction to make.

WYOMING - Attorney General John D. Troughton

Candidates - Term of Office - Number 80-013, issued 7/2/80

If no qualified person is elected to the office of justice of the peace and the board of county commissioners then appoints a person to the office, the appointed person's term lasts only until the next general election.

Opinion written by Asst. Attorney General Samuel A. Soule

Government Employees - Eligibility of State Legislator to Civil Office - Number 79-037, issued 12/27/79

Article 3, sec. 8 of the Wyoming Constitution prohibits an incumbent state legislator from being appointed to the position of alternate justice of the peace because that position is considered to be a civil officer under the state. The five point criteria for determining whether a particular position is a civil office under the state were established in State v. Hankins, 257 P. 441 (Mont. 1927).

INDEX

ADVERTISING AND SOLICITATION — Page

- Attorney Publishes Political Ads, *Russell* v. *Kansas* 7
- Author Identification, Va. Att'y Gen. Op 111
- Bulk Third Class Mailings Rate, *Greenberg* v. *Bolger* 15
- Political Signs, *People* v. *Middlemark*, N.Y 64
- Reporting Requirements, *FEC* v. *Central Long Island Tax Reform Immediately Committee* 16

APPORTIONMENT AND REDISTRICTING

- At-large elections, *Aranda* v. *Van Sickle*, Calif 1, 17
- *City of Mobile, Alabama* v. *Bolden* 1, 8
- *In re Petition to Abolish Wards Hanover Township*, Pa 64
- *McIntosh Cty., NAACP* v. *City of Darien*, Ga 23
- *Nevett* v. *Sides*, Ala 3, 19
- *Voter Information Project* v. *City of Baton Rouge*, La 19
- Board of Education Positions, *Baker* v. *Regional High School Dist. No. 5*, Conn 20
- County Plan, *Sanchez* v. *McDaniel*, Texas 21
  - *sub nom*. *McDaniel* v. *Sanchez* 6
- Decennial Census, *Young* v. *Klutznick*, Mich 21
- Disannexation Procedure, *Vara* v. *City of Houston*, Texas 7
- House of Representatives, *Sharrow* v. *Holtzman* 7
- Residency Requirements of Candidates, *Toldson* v. *Fair*, La 65
- School District, *Baker* v. *Regional High School Dist. No. 5*, Conn. 20
- State Senate District, *Crowell* v. *Mader*, Tenn 2

BALLOTS

- Absentee, *Bly* v. *McLeod*, S. C 1
- Cali. Att'y Gen. Op 106
- *Crutchfield* v. *Collins*, Tenn 100
- *Emery* v. *Robertson County Election Commission*, Tenn 84
- *Meyer* v. *Keller*, La 85
- *Tate* v. *Collins* 56
- Va. Att'y Gen. Op 111
- Access Requirement
  - Independent, *Anderson* v. *Babb*, N.C 44
  - *Anderson* v. *Celebrezze*, Ohio 45
    - *sub nom*. *Celebrezze* v. *Anderson* 5
  - *Anderson* v. *Hooper*, N.M 46
  - *Anderson* v. *Morris*, Md 48
  - *Anderson* v. *Quinn*, Maine 49
  - *McLain* v. *Meier*, N.D 24
  - Minority Party, *Dean* v. *Austin*, Mich 2, 25
  - *Illinois State Board of Elections* v. *Socialist Workers Party*. 9

    Meads v. Carter, D.C. 6
    W. Va. Libertarian Party v. Manchin, W.V. 67
      sub nom. Citizens Party v. Manchin 5
    Petition Signatures, Thomas v. Lyons, Ky. 66
  Death or Withdrawal of Candidate, Va. Att'y Gen. Op. 111
  Name Change, None of the Above v. Hardy, La. 76
  Party Affiliation Designation, Curry v. Kennelly, Conn. 26
  State ex rel. Graham v. Board of Elections 69
  Public Policy Questions, Mass. Att'y Gen. Op. 110

BOARDS AND COMMISSIONS

  Administrative Remedy before FEC, United States v. Intern. Union of Operating Eng. 27
    sub nom. Internat'l Union of Operating Engineers, Local 701 v. U.S. 3
  FCC Ruling
    Equal Broadcasting Opportunities, In Re Complaint of Barnstead v. Station WGBH-TV, Boston, Mass. 102
    In Re Complaint of Brown for President Committee v. National Broadcasting Company Inc. 102
    In Re Complaint of John F. Donato v. New Jersey Public Broadcasting Authority 103
    In Re Complaint of John J. Marino v. Station WCVB-TV, Boston 104
    In Re Request of National Citizens Committee for Broadcasting 105
    Right of Access, CBS Inc. v. Federal Communications Commission 28
      sub nom. American Broadcasting Companies, Inc. v. FCC 5
      sub nom. National Broadcasting Company, Inc. v. FCC 7
  Jurisdiction, Zimmerman v. Florida Elections Commission, Fla. 69
  Selection of Members, Byrd v. City of San Antonio, Tex. 29

CAMPAIGN FINANCING

  Contributions
    Committee, Citizens Against Rent Control/Coalition For Fair Housing v. City of Berkeley, Calif. 71
    Defines "to influence", New Jersey State Chamber of Commerce v. New Jersey Election Law Enforcement Commission, N.J. 72
    Disclosure, Cahill v. Governmental Ethics Commission, Kan. 1
    Kaler v. Common Cause of Georgia 70
    Extortion, United States v. Cerilli, Pa. 51
      sub nom. Cerilli v. U.S., Pa. 1
    Illegal, State v. Granato, Utah 71
    Influence City Council, Woodland Hills Residents Assn., Inc. v. City Council, Cal. 74
    Limitation, California Medical Ass'n v. Federal Election Commission 5, 39
    Citizens Against Rent Control/Coalition For Fair Housing v. City of Berkeley, Calif. 6, 71

  - Let's Help Florida v. McCrary 29
  - Mott v. Federal Election Commission 30
  - National Conservative Political Action Committee v. FEC 31
  - New Jersey State Chamber of Commerce v. New Jersey Election Law Enforcement Commission, N.J 72
  - Lobbyists, California Fair Political Practices Commission v. Institute of Governmental Advocates, Calif 1
- Disclosure Requirements, Common Cause v. FEC 41
- Common Cause v. National Archives and Records Service 36
- FEC v. Central Long Island Tax Reform Immediately Committee 16
- Kaler v. Common Cause of Georgia 70
- Expenditure, New Jersey State Chamber of Commerce v. New Jersey Election Law Enforcement Commission, N.J 72
- Labor Union, American Federation of Labor and Congress of Industrial Organizations v. FEC 37
  - sub nom. Federal Election Commission v. AF of L-CIO 6
- Lottery, Ind. Att'y Gen. Op 109
- Political Action Committee, American Federation of Labor and Congress of Industrial Organizations v. FEC 37
  - sub nom. FEC v. AF of L-CIO 6
- Bread Political Action Committee v. Federal Elections Commission, D.D.C 38
- California Medical Ass'n v. Federal Election Commission 5, 39
- Common Cause v. Federal Election Commission 41
- Federal Election Commission v. National Right to Work Committee, ... 33
- Martin Tractor Company v. Federal Election Commission 35
- Mass. Att'y Gen. Op 110
- Mott v. Federal Election Commission 30
- Private and Public, Republican National Committee v. Federal Election Commission 32
- Public, Committee to Elect Lyndon La Rouche v. Federal Election Commission 2, 42
- Gelman v. Federal Election Commission 6
- Jones v. Federal Election Commission 3
- Voter Pamphlet Expenses, Kahn v. Appellate Department of Superior Court of Alameda County, Calif 3

CANDIDATES

- Ballot Access, Coon v. Allegheny County Board of Elections, Pa 75
- Faulkner v. Sadowski 43
- Illinois State Board of Elections v. Socialist Workers Party, Ill. 9
- McLain v. Meier, N.D 24
- Broadcast, Right of Access, CBS, Inc. v. Federal Communications Commission 5, 28
  - sub nom. American Broadcasting Companies, Inc. v. FCC 5
  - sub nom. National Broadcasting Company, Inc. v. FCC 7

Independent
Ballot Access, Anderson v. Babb, N.C. 44
Filing Requirement, Anderson v. Celebrezze, Ohio 45
sub nom. Celebrezze v. Anderson 5
Anderson v. Hooper, N.M. 46
Anderson v. Mills, Ky. 47
Anderson v. Morris, Md 48
Anderson v. Quinn, Maine 49
Minnesota Fifth Congressional District Independent-Republican Party v. Minnesota 76
Wilson v. Firestone 7
W.V. Libertarian Party v. Manchin 67
sub nom. Citizens Party v. Manchin 5
Stroom v. Civilitti 7
Minority Party, W. Va. Libertarian Party v. Manchin, W. Va. 67
sub nom. Citizens Party v. Manchin 5
Name Change, None of the Above v. Hardy, La 76
Nominating Petitions, Bowe v. Chicago Electoral Board 77
Caralyus v. Hayduk, N.Y. 77
In re Lucasi, Pa. 77
Kahler v. McNab, N.Y. 78
Suarez v. Sadowski, N.Y. 78
Non-party member Endorsement, Mrazek v. Suffolk County Board of Elections, N.Y. 50
Petition Requirements, Higby v. Mahoney, N.Y. 79
Public Employees, State v. Lorain County Board of Elections, Oh. 79
Public Financing, Republican National Committee v. Federal Election Commission 3, 32
Committee to Elect Lyndon La Rouche v. Federal Election Commission 2, 42
Qualifications
Age Requirement, Trafelet et al. v. Thompson et al. 4
Bondability, State ex rel. Bromelow v. Daniel, W.Va 80
Judicial Office, Bullock v. State of Minnesota 50
Fla. Att'y Gen. Op. 107
Residence Requirements, Hall v. Miller, Ky. 80
Marra v. Zink, W. Va 81
Slocum v. Dewitt, La 82
Toldson v. Fair, La 65
Statement of Qualifications, Loza v. Panish, Cal 82
Term of Office, Wym. Att'y Gen. Op. 115
Write-in, Gould v. Gavett 2

CORRUPT PRACTICES

Absentee Ballot, Kiehne v. Atwood, N.M. 87
Alleged Misuse of Public Funds, Winpisinger v. Watson, D.C. 53
Alleged vote-buying scheme, United States v. Saint Landry Parish School Board, La 63

- Extortion of Political Contributions, *United States* v. *Cerilli* 51
  - *sub nom*. *Cerilli* v. *U.S.*, Pa 1
- *Scheibel* v. *Pavlak*, Minn 89
- Fraudulent Registration, *United States* v. *Cianciulli*, Pa 51
- Illegal Solicitation of Contributions, *Federal Election Commission* v. *National Right to Work Committee* 33
- Public Officials' Ethic Law, *Pennsylvania State Association of Township Supervisors* v. *Thornburgh*, Pa 83
- Timely Removal from Office, *Slawik* v. *Flosom*, Delaware 83
- Willful Violation of Fair Election Practices Act, Va.Att'yGen.Op. 111

DAY FOR HOLDING ELECTION

- Va. Att'y Gen. Op 111
- W. Va. Att'y Gen. Op 114

ELECTION CONTESTS

- Ballot
  - Absentee, *Emery* v. *Robertson County Election Commission*,Tenn. 84
  - *In re Judicial Review by Republican Candidates*, N.C 85
  - *Meyer* v. *Keller*, La 85
  - *Simonetti* v. *Brick*, Ark 88
  - Clarity & Objectivity, *Thirty Voters of Cty. of Kauai* v. *Doi*, Hawaii 96
- Election Law/Mandatory or Directory, *Menssen* v. *Eureka Unit District No. 140*, Ill 86
- Illegal Votes, *Emery* v. *Robertson County Election Com'n*, Tenn 84
- *Hembree* v. *City of Stilwell*, Okla 86
- *Kiehne* v. *Atwood*, N.M 87
- *Pyron* v. *Joiner*, Miss 87
- *Simonetti* v. *Brick*, Ark 88
- Misrepresentation during Campaign, *Scheibel* v. *Pavlak*, Minn 89
- Recounts, *Brunet* v. *Evangeline Parish Board of Supervisors of Elections*, La 90
- *In Re Contest of 1979 General Election for the Office of District Attorney of Washington County, Pa* 90
- Residency Requirements, *Toldson* v. *Fair*, La 65
- School Bond, *Frias* v. *Board of Trustees of Ector County*, Tex 2, 91
- Special Taxing District, *Hanrahan* v. *Alterman*, Md 92
- State Constitution Amendment, *Crenshaw* v. *Blanton*, Tenn 6
- Statement of Canvass, *Reed* v. *City of Montgomery*, Ala 92
- Timeliness, *State ex rel. Kimmons* v. *City of Azle*,Tex 93
- *State ex rel. Wilson* v. *Hart*, Mo 94

FINANCIAL DISCLOSURE

- Elected and Appointed Officials, *Snider* v. *Shapp*, Pa 94

GOVERNMENTAL EMPLOYEES

Dual Officeholders, Fla. Att'y Gen. Op.................... 107
Va. Att'y Gen. Op.................... 112
Eligibility of State Legislator to Civil Office, Wym. Att'y Gen. Op.................... 115
Members of Executive Committee of Political Party, Fla. Att'y Gen. Op.................... 107
Patronage Positions, Branti v. Finkel, N.Y.................... 1, 11
Political Activities, Council #11, American Federation of State, County and Municipal Employees v. Michigan Civil Service Commission.................... 96
Winpisinger v. Watson, D.C.................... 4, 53
Resign-to-Run Law, Fla. Att'y Gen. Op.................... 107, 108
Selection of city public service board by incumbent members, Byrd v. City of San Antonio, Texas.................... 1, 29

INITIATIVE AND REFERENDUM

Ballot Clarity & Objectivity, Thirty Voters of Cty. of Kauai v. Doi, Hawaii.................... 96
Contribution Limitation, Citizens Against Rent Control v. City of Berkeley.................... 5, 71
Let's Help Florida v. McCrary.................... 29
School Board Selection, Va. Att'y Gen. Op.................... 112
Single-subject Requirement, Fair Political Practices Com. v. Superior Court, Calif.................... 97
  sub nom. California Fair Political Practices Commission v. Institute of Governmental Advocates, Calif.................... 1

POLITICAL PARTIES

Ballot Count Representatives, Va. Att'y Gen. Op.................... 112
Ban on Partisan Political Activity, Marion County Democratic Central Committee v. Unger.................... 6
Challenge, Blanket Primaries, Heavey v. Chapman, Wash.................... 98
  Open Primaries, State ex rel. La Follette v. Democratic Party. 99
    sub nom. Democratic Party of the U.S. v. Wisconsin.................... 6
Change-over Candidate, State ex rel. Graham v. Board of Elections 69
Election Officers, Va. Att'y Gen. Op.................... 113
Executive Committee, Wymbs v. Republican State Executive Committee of Florida.................... 54
Freedom of Association, Marchioro v. Chaney, Wash.................... 10
Curry v. Kennelly, Conn.................... 26
National Convention Delegates, Wymbs v. Republican State Executive Committee of Florida.................... 54
Nomination Limitation, Coon v. Allegheny County Board of Elections, Pa.................... 75
Non-party member Endorsement, Mrazek v. Suffolk County Board of Elections, N.Y.................... 50

Patronage Positions, *Branti* v. *Finkel*, N.Y........................ 1, 11
Solicitations/Retiring pre-1975 Campaign Debts, *National Conservative Political Action Committee* v. *FEC*........................ 31

PRIMARY ELECTIONS

Ballot Access, *Faulkner* v. *Sadowski*................................ 43
Kay v. *Austin*, Mich.. 55
Thomas v. *Lyons*, Ky.. 66
Blanket System, *Heavey* v. *Chapman*, Wash............................ 98
Change-over Candidate, *State ex rel. Graham* v. *Board of Elections* 69
Fill Vacancy, Va. Att'y Gen Op.. 113
Open System, *State ex rel. La Follette* v. *Democratic Party*, Wis.. 99
  sub nom. *Democratic Party of the U.S.* v. *Wisconsin*............ 5
Qualifications to Vote, *Smith* v. *Penta*, N.J....................... 4

QUALIFICATIONS TO VOTE

Blanket Primary System, *Heavey* v. *Chapman*, Wash.................... 98
Convicts, *Allen* v. *Ellisor*, S.C.................................... 57
Crutchfield v. *Collins*, Tenn.. 100
Tate v. *Collins*.. 56
Felons, Va. Att'y Gen. Op... 113
Fraudulent Registration, *United States* v. *Cianciulli*, Pa......... 51
Open Primary System, *State ex rel. La Follette* v. *Democratic Party*, Wis... 99
  sub nom. *Democratic Party of the U.S.* v. *Wisconsin*............ 6
Special Districts, Freeholder, *James* v. *Ball*..................... 57
  sub nom. *Ball* v. *James*, Arizona.............................. 5

REGISTRATION

False Residential Status, *United States* v. *Cianciulli*, Pa........ 51
Registrar's Failure to Perform Duty, *Emery* v. *Robertson County Election Commision*, Tenn.. 64
Thirty Day Deadline Before Election, *Key* v. *Board of Voter Registration of Charleston County*, S.C......................... 58
W. Va. Att'y Gen. Op.. 114

RESIDENCE REQUIREMENT

Candidates, *Hall* v. *Miller*, Ky..................................... 80
Marra v. *Zink*, W. Va... 81
Commonwealth Attorney, Va. Att'y Gen Op............................... 113
Fraudulent Voter Registration, *United States* v. *Cianciulli*, Pa... 51

SCHOOL ELECTIONS

At-Large Elections, Williams v. Brown ... 4
Bonds, Frias v. Board of Trustees of Ector County Independent School District, Tex ... 2, 91
Election Contest, Frias v. Board of Trustees of Ector County, Tex. 2, 91
Election Law/Mandatory or Directory, Menssen v. Eureka Unit District No. 140, Ill ... 86

SPECIAL ELECTIONS

Annexation, Reed v. City of Montgomery, Ala ... 92
Recall Elections, Fla. Att'y Gen Op ... 108
Vacancy of President of City Council, City of Atlanta v. League of Women Voters of Atlanta-Fulton County, Ga ... 101

VOTING RIGHTS ACT

Apportionment, City of Mobile v. Bolden, Ala ... 8
Sanchez v. McDaniel, Tex ... 21
  sub nom. McDaniel V. Sanchez ... 6
U.S. v. Mississippi ... 4
At-large Election, Sonnier v. Mayor & Town Council of Vinton, La. 59
Fraudulent Registration, United States v. Cianciulli, Pa ... 51
School Trustees, Interim Board of Trustees of Westheimer Independent School District v. Coalition to Preserve Houston. 6
Section 5, City of Dallas v. United States ... 59
City of Rome v. United States, Ga ... 2,12,60,61
Donnell v. U.S. ... 2
Garza v. Gates, Texas ... 62
Henry v. Mississippi ... 3
United States v. Saint Landry Parish School Board, La ... 63
Voting Dilution, McIntosh Cty., NAACP v. City of Darien, Ga ... 23

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